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Citizenship of the United States

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BY ONE of those curious omissions in that almost faultless document, the Federal Constitution, when adopted in 1789, nowhere defined citizenship, or determined who was a citizen of the United States. It failed to enumerate the qualifications required for citizenship, yet the whole purport of that charter was concerned with establishing a government for citizens of the United States.

The omission was not accidental. It was significant. It reflected the condition and temper of the times, when the making of the nation was in embryo; when the forces of interdependence and centralization, the steamship, the railroad, the telegraph, and the daily newspaper, were unknown; when Philadelphia was a fortnight's distance from Boston; and when commerce between states was insignificant, and the little that took place was impossible, except by sea, carried in vessels of light tonnage.

It was a matter of personal pride to be a citizen of a great state like Virginia, Massachusetts, New York, or South Carolina. To be addressed as a citizen of the United States conveyed no meaning, and was something to be resented as chimerical and unreal. Of all statesman of that day, James Wilson, Alexander Hamilton, and John Marshall alone conceived one land, one people, one law.

No straight line marks the historical development of the citizen of the United States. He grew into political significance with the commercial and industrial interdependence of the people, and a realization that such people constituted a nation. His evolution from the modest conception of the early days to his importance at this time was gradual, for the idea of citizenship of the United States as distinct from citizenship of the state, as the question came before the country from time to time, was of slow growth and confusing in application; and the full meaning of what is implied in citizenship of the United States is not understood even in our own day and generation.

Early Conception of Citizenship.

Some time after the beginning of the young Republic, the course of events forced a conviction that the citizen of the United States spoken of in the Constitution was something more than a mere legal fiction. His existence apart from citizenship of a state, however, was denied. If his existence was admitted, it was said that he was a citizen of the

United States by courtesy, and clothed with such political significance only through and by reason of his being a citizen of one of the states composing the nation.

Congress at no time attempted to define his place by formal legislation. It was left to the slow process of the courts to work out and define national citizenship piecemeal in desultory, private decisions, affecting his status, his rights, and his duties. When the courts were called upon to pass on the legal and political rights of a person born in the District of Columbia, or residing in one of the early territories, like Michigan and Minnesota, great embarrassment arose. Such person was in a more precarious position because, not being a citizen of a state, his relation to the Nation was in greater doubt. As a result, the status of the people of the territories with respect to National citizenship has not been judicially determined as a finality even to this day. It is still open to controversy, when the civil rights of the native inhabitants of our recent colonial possessions in Porto Rico and the Pacific, and elsewhere, are under discussion.

From the time of the adoption of the Constitution in 1789 to the passage of the 14th Amendment in 1868, and since that period, extending for more than a century, citizenship of the United States in various relations was a subject of vital discussion in Congress, was a source of disagreement by the courts, a cause of embarrassment to the Executive Department, and brought about momentous upheavals among the people in their political status.

Citizenship of the United States assumed a significance never before realized, with the acquisition of Louisiana and the accession of Texas and California, and the increasing power of Federal government by reason of territorial enlargement. Its significance soon became serious, and its consideration grew virulent as the status of the negro, when emancipated and finally freed as a race, pressed for solution.

Speaking to Congress as late as 1833, John C. Calhoun, then a Senator from South Carolina, defined citizenship in the accepted sense:

"If by a citizen of the United States is meant a citizen at large, whose citizenship extends to the entire geographical limits of the country, without having a local citizenship in some state or territory, a sort of citizenship of the world, such citizenship must be a perfect nondescript."

The supreme test came with the famous Dred Scott decision, when the Calhoun definition of 1833 was elaborated, and was given the force of law by the Supreme Court.

John C. Calhoun of South Carolina, guiding spirit of his party in the Senate and moulder of public opinion, voiced the popular conception regarding citizenship of the United States; but it was not until twenty-five years later, in 1858, that the Supreme Court set its seal of approval on this dictum, by construing the Constitution and declaring as law that a person was a citizen of the United States only through his citizenship of one of the states. The generally accepted theory of citizenship received judicial affirmation in the Dred Scott decision.

Citizenship as defined in the Dred Scott Case.

By a strange perversity, the question of citizenship arose in a case to determine whether a black man had a right, as a matter of law, to bring suit in the United States courts, a privilege accorded to citizens of the United States.[1] This action, one of the most important ever determined in its effect upon the history of our country, had a most humble and remarkable origin. The parties in interest never for a moment suspected the political volcano which slumbered in its apparently innocent procedure. The suit at first attracted no particular attention, as it apparently was a controversy between private parties, in which the public had no real concern. But by the time the case reached the Supreme Court the momentous issues involved—citizenship of the United States, status of the negro, free soil and slave territory, the Missouri Compromise—loomed up with direful forebodings behind the action of this humble black man. And

[1] Scott v. Sandford, 19 How. 577, 15 L. ed. 772.

there were arrayed on one side the partisans of free soil and on the other the champions of slavery throughout the country, during its final consideration by the highest Court of the land, called upon to construe the rights of the negro, if any he had under the Constitution.

It may not be out of place to outline the facts involved in the case. Dred Scott was a negro slave, born in Missouri. His master, an army officer, in 1834 took him to Illinois, a state where slavery was prohibited by statute. In 1836 his master took him to Minnesota, at that time a territory, in which slavery had been prohibited by Congress in 1820, in the act known as the Missouri Compromise. From Minnesota his master was transferred in 1838 to Jefferson Barracks, near St. Louis, and took Dred Scott and his family back to Missouri. Here Scott was sold by his master as a slave, to John Sandford of New York.

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Scott passed into the hands of his new master, and was whipped for a trifling offense, an occurrence not unusual in those days. Some sharp-witted lawyer, the ambulance chaser of his day, who scented a fee, probably induced Scott to bring suit for damages against Sandford, on the ground that, by his residence in Illinois and Minnesota, free soil where slavery was prohibited, he was a free man; and that his being held as a slave and the whipping constituted an assault, for which Scott demanded damages against Sandford in the sum of $5,000. Suit was filed in the circuit court of the United States for the district of Missouri, alleging diverse citizenship, that practice being permitted by the Constitution for a citizen of one state to sue a citizen of another state; provided, of course, Dred Scott was a citizen of the state of Missouri, and the defendant Sandford was a citizen of the state of New York, as set forth in the negro's declaration. Sandford's plea to the jurisdiction of the court denied that Scott was a citizen of Missouri, or of any other state, and alleged that Scott was a slave descended from negro ancestors, and was the property of Sandford, and for that reason he had no standing in the court of the United States, and his petition should be dismissed for lack of jurisdiction. Scott demurred to the plea, and on hearing the circuit court found for the plaintiff and sustained the demurrer, whereupon Sandford filed answer, denying the charges alleged. After a trial upon the issue of fact before a jury, the verdict found the defendant Sandford not guilty. A writ of error was issued to the Supreme Court, December, 1854.

The case was squarely before the Supreme Court of the United States, turning upon the question whether Dred Scott, a negro, had any claim to citizenship by reason of his having lived on free soil. Three years later, after being twice argued, the Court, speaking through Chief Justice Taney, decided against Scott, dismissing his petition for the reason that the Constitution did not recognize free soil from which slavery could be barred, and, as a negro could not acquire citizenship, the circuit court of the United States had no jurisdiction to hear and determine the case.

The Court, in construing who were

citizens of the United States, interpreted the words, "People of the United States" and "Citizens of the United States," as used in the Constitution, to be synonymous terms, signifying membership of the political community; and held that wherever the word "states" or "United States" occurred, they are to be strictly construed to mean the original thirteen states and such other states as were admitted to the Union from time to time.

"The people of the respective states were the parties to the Constitution," said Justice Taney. "These people consist of the free inhabitants of those states. They had provided in their Constitution for the adoption of a uniform rule of naturalization, and that their descendants and persons naturalized were the only persons who could be citizens of the United States. Citizenship of the United States came through the citizenship of the several states; but there was one restriction. While each state confers its own citizenship on any class or description of persons it thinks proper, such as a free person descended from Africans held in slavery, yet such a person would not be a citizen of the United States, for the reason that the state could not introduce any person or description of persons who were not intended to be embraced in the new political family, which the Constitution brought into existence, but were intended to be excluded from it. Consequently, a man of African descent as the negro, Dred Scott, whether slave or free, was not and could not be a citizen of the United States."

Thirty years later, the same Court, in 1888, considering the application for American citizenship of the Chinese or persons other than of the white race, speaking through Justice Field, followed Justice Taney, to the effect that Chinamen cannot be citizens of the United States, because such persons were not intended by the people adopting the Constitution to be embraced in the political family known as the citizens of the United States.[2]

Justice Curtis of Massachusetts, sitting in the Dred Scott Case, dissented from the opinion of Taney, and was the first jurist on the Supreme Bench to declare the right of a free negro to citizenship. Nevertheless, he agreed with the majority of the Court, that, under the Constitution, citizenship of the United States with reference to natives was dependent upon citizenship in the several states under their respective constitutions and laws; but where any free person, descended from Africans held in slavery, was a citizen of a state under the Confederation, he became by that fact a citizen of the United States on the adoption of the Constitution.

"I can find nothing in the Constitution which, *proprio vigore*, deprives of their citizenship any class of persons who were citizens of the United States at the time of its adoption, or who should be native-born citizens of any state after its adoption; nor any power enabling Congress to disfranchise persons born on the soil of any state, and entitled to citizenship of such state by its constitution and laws. And my opinion is, that, under the Constitution of the United States, every free person born on the soil of a state, who is a citizen of that state by force of its constitution or laws, is also a citizen of the United States."

Effect of the Fourteenth Amendment.

The divergent views of the two schools of Constitutional construction regarding the status of a free negro, one denying, the other recognizing, his rights to citizenship of the United States, have passed into memorable history. Whichever view may have been right in legal interpretation, the adoption of the 14th Amendment by the people, ten years after the decision, set aside the Dred Scott decision of the Supreme Court as a rule of law respecting the negro, and changed the whole subject of citizenship, by removing from doubt and discussion the bitter and long-standing dispute.

The 14th Amendment recognizes in express terms, if it does not in fact create, citizens of the United States. It makes citizenship depend upon the place of one's birth, or the fact of one's adoption under the law of naturalization, and not upon the Constitution or laws of any state or the condition of one's ancestry.

[2] United States v. Wong Kim Ark, 169 U. S. 649, 42 L. ed. 890, 18 Sup. Ct. Rep. 456.

Thenceforth the American enjoyed a recognized double citizenship. He is at once a citizen of the United States by birth, and he is a citizen of a state as a matter of choice. Birth as a test of citizenship is a rule common to many countries. From earliest times in English jurisprudence, it was laid down as a broad principle, that the place of birth fixed the place of citizenship. A child born within any territory subject to the King of England is a natural born subject of the King, and is no alien in England. This was the rule of the American colonies prior to 1776, so that the 14th Amendment in this respect reaffirmed the common law.

The distinction between citizenship of the United States and citizenship of a state is clearly recognized and established. Not only may a man be a citizen of the United States without being a citizen of a state, but an important element is necessary to convert the former into the latter. He must reside within the state to make him a citizen of it. But it is only necessary that he should be born or naturalized in the United States, and subject to the jurisdiction thereof, to be a citizen of the Republic.[3] But such jurisdiction must be complete and immediate; otherwise, as in the status of the Indian, he is not included in the term citizen.[4]

Prior to the 14th Amendment, a citizen of the United States must first be qualified as a citizen of some state; after the 14th Amendment, a citizen of a state is merely a citizen of the United States residing in that state.

Under the Constitution, certain rights, privileges, and immunities belong to an American as a free man and free citizen. After 1868 these rights belong to him as a citizen of the United States, and are not dependent upon his citizenship of any state. The 14th Amendment does not confer any new privileges or immunities upon the citizen, or attempt to define or to enumerate those already existing; it assumes that there are such privileges and immunities, which belong of right to a person as a citizen of the United States, and ordains that they shall not be abridged by state legislation.

The 14th Amendment in part reads as follows:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

This addition to the Bill of Rights is of great historical importance. Its immediate purpose, following the Civil War of 1861 and the abolition of slavery in 1863, was to throw about the unfortunate negro race further civil and political protection, which the 13th Amendment, abolishing slavery, failed to secure. In a spirit of magnanimity, the 14th Amendment was enacted for the negro's express benefit. Henceforth the negro and his descendants were created citizens of the United States and of the particular states wherein they reside, and the intention was that they were to be given all the benefits and all the immunities which, by right of freemen, white citizens of the United States enjoy.[5] But the results of the 14th Amendment are broader: in effect, it withdrew from the states powers theretofore enjoyed by them, to an extent not yet fully ascertained, and it is the province of the Supreme Court to differentiate these powers, so necessary to the perpetuity of our dual form of government.

The Federal Constitution does not confer the right to vote on anyone, and suffrage is not a part of citizenship of the United States. Minors and women, if otherwise competent, are citizens of the United States. Likewise, lunatics, paupers, and convicts are citizens of the United States; but their citizenship, if denied by the states, does not embrace the right to vote.[6]

Citizenship by Adoption.

With this reservation to his sovereignty, if the citizen of the United States

[3] Slaughter-House Cases, 16 Wall. 36, 21 L. ed. 394.

[4] Elk v. Wilkins, 112 U. S. 94, 28 L. ed. 643, 5 Sup. Ct. Rep. 41.

[5] Strauder v. West Virgina, 100 U. S. 303, 25 L. ed. 664, 3 Am. Crim. Rep. 515.

[6] Minor v. Happersett, 21 Wall. 162, 22 L. ed. 627.

appears careless of his birthright, the advantages which he enjoys over other men in the world are eagerly sought after by those who stand outside the pale and seek adoption into his family. With respect to aliens, that is, persons foreign born, citizenship of the United States is a white man's prerogative, with his admission to the political family regulated solely by Congress through its laws of naturalization. The Civil War gave citizenship to the black man born on American soil. Neither the yellow man nor the brown man, neither Chinese nor Japanese, neither Malay, Hawaiian, nor Filippino, is welcome under the laws of naturalization; and the red man, as a domestic alien, is denied citizenship so long as he is held in tribal relations as a ward of the nation. The provisions of the naturalization laws apply only to aliens who are free white persons, and, after 1875, also to the negro of African nativity and of African descent.[7] To all other men, until Congress provides otherwise, the doors of citizenship through naturalization are shut; but a person of the excluded races, as Chinese or Japanese, if born in one of the states, as determined by the Supreme Court of the United States, although of alien parentage, is by virtue of the 14th Amendment a citizen of the United States.[8]

Apart from the provisions by which an individual acceptable to the United States may be naturalized, whole communities have been admitted to citizenship by treaty or by joint resolution of Congress. The relations which the inhabitants of ceded territory shall bear to the United States are determined by the treaty of cession. Such treaty is the law of the land. Under the Louisiana Purchase, by the Treaty of Paris in 1803, it was provided that, "the inhabitants of the ceded territory of Louisiana should be incorporated into the Union of the United States, and admitted as soon as possible according to the principles of the Federal Constitution to the enjoyment of all the rights and advantages and immunities of citizens of the United States." By virtue of this treaty, the white inhabitants of the territory of Louisiana and their descendants became citizens of the United States on an equal footing with the citizens of the original states. In like manner the white inhabitants of Florida, New Mexico, and California, and Alaska, were each in turn admitted to citizenship of the United States under treaty. The Republic of Texas was admitted to the Union as a state by joint resolution of Congress.

A radical departure was made, however, in 1898, when Hawaii, Porto Rico, and the Philippines were annexed, with the proviso, "that the civil and political status of the native inhabitants of the territories ceded to the United States shall be determined by Congress." In other words, the native inhabitants of these possessions are not citizens. Whether the natives of these islands at any time shall be admitted to the full privileges and immunities of citizens of the United States rests with Congress. It is Congress which shall determine to whom and to what extent rights of citizenship shall be extended to the native inhabitants of our insular possessions. At each session the tendency is to grant greater rights and privileges to the native people of these possessions, as they qualify themselves for a citizen's duties.

All Men not Equal.

A century and a quarter of national growth has developed, in the status of citizenship, curious and anomalous conditions not dreamt of by the fathers. At first, citizenship of the United States was dependent and subordinate to citizenship of one of the states. After the 14th Amendment, citizenship was acquired by birth in a state or by naturalization. Through changes brought about mainly by judicial interpretation, a system of caste has grown up. All men are not equal in the Republic. Only the native born in the states, enjoy full power embraced in the title, "Citizenship of the United States." The naturalized citizen, barred by constitutional prohibition from the President's chair, may not be conscious of that disability. But the people of the territories may have reason to complain, when their status may be one thing in the District of Columbia, a dif-

[7] Acts of Congress 1790–1906.

[8] United States v. Wong Kim Ark, 169 U. S. 649, 42 L. ed. 890, 18 Sup. Ct. Rep. 456.

ferent thing in New Mexico, and something else in Alaska. In the insular dependencies, the native Porto Rican, the Hawaiian, and the Filippino are wholly at the pleasure of Congress, and differ in political and civil rights, not only from the people of the territories, but one with another and class with class. In this year of grace, the descendant of the emancipated black man may truly look down with scorn upon his political inferior, the yellow man, the red man, and the brown man. The Chinese youth born in San Francisco may as a patriotic American deport his alien father. While the native Indian, as a dependent ward of the Nation, must accept, no matter how unwillingly, guardianship of a grudging white man.

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Status of the Islanders

Among the still unsolved problems incident to our annexation of the Spanish possessions, none is more complex, nor presents more difficulties, both practical and theoretical, than that of the status of the Islanders, both Porto Ricans and Filipinos. (President's Message, 1913.) This is mainly owing to the fact that for the first time in our history we have acquired real dependencies. By that term I understand territories inhabited by a settled population differing from us in race and civilization to such an extent that assimilation seems impossible, and varying among themselves in race, development, and culture to so great a degree as to make the application of any uniform political system difficult, if not impracticable.

It is idle to attempt to find any adequate or guiding precedents in our former territorial acquisitions. The territories transferred from France and Mexico were not sufficiently populated to bring us face to face with the real imperial problem, i. e., the domination over men of one order or kind of civilization by men of a different and higher civilization. . . . They were, moreover, largely of Caucasian race and civilization, and a growing stream of immigration soon made the new lands thoroughly American, and thus the question there quickly became academic. Moreover, the two civilizations were in fact equal or nearly so, and the treaties, both of Paris (1800) and of Guadalupe-Hidalgo (1848), recognized that fact by according to the new inhabitants the rights of American citizens. Thus, the problem as to the legal status of the inhabitants of Louisiana and the territory acquired from Mexico was solved or solved itself ab initio. The underlying theory upon which both treaties were based was expansion rather than imperialism.

But the problem of to-day cannot be solved either by extermination, as in the case of the Indian, nor by assimilation, as in the case of the few Frenchmen and Spaniards. Neither the methods of Miles Standish nor those of Jefferson will suffice us now. We must move on a heretofore untrodden path, and seek for precedent upon which to base intelligent legislation and administration, not in our own history, but in that of other nations who have preceded us in attempting to govern nonassimilable peoples.—Frederic R. Coudert, in Certainty and Justice.

Suability of States

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IN A brief article, as this must necessarily be, only the general aspects of the question of suability of states can be discussed. Here nothing more than the proposition of the immunity of a sovereign from suit in its relation to controversies between individuals and states in the United States will be taken up, and this only in so far as it has been incorporated in our jurisprudence through the addition of the 11th Amendment to the Constitution of the United States.

As is well known, the 11th Amendment, which reads, "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state," was written into our Constitution to overthrow the case of Chisholm v. Georgia, 2 Dall. 419, 1 L. ed. 440. In this case it was decided that the provision in § 2, article 3, of the Constitution, which extended the judicial power of the courts of the United States "to controversies between a state and citizens of another state," meant that a citizen of South Carolina could sue the state of Georgia in the Supreme Court of the United States. The nature of the case and the arguments of the different judges are familiar enough to require no comment. It should be noted, however, that the decision was rendered precipitately,—thirteen days after the case was submitted to the court,[1]—and that the amendment overthrowing the decision passed Congress precipitately,—appearing in the Senate on the 2d of January and passing the House of Representatives on the 4th of March, 1794.[2] It had been previously conceded by some of our greatest statesmen—notably Madison and Marshall—that if such a case should arise the decision would be the reverse of what it was. But since the constitutional provision had been thus interpreted, it was thought desirable to secure the immunity of the states to suits by an amendment to the Constitution.

Since the passage of the 11th Amendment we have had in our Constitution provisions that apparently counteract each other. With the addition of the 14th Amendment this conflict of principles has been made more pronounced. As the Constitution now reads, article 1, § 10, places the following prohibition upon the states: "No state shall . . . pass any law . . . impairing the obligation of contracts," and the 14th Amendment provides that "no state shall . . . deprive any person of life, liberty, or property without due process of law." But, as we have seen, the 11th Amendment forbids that the judicial power of the United States be construed to extend to any suit in law or equity brought by an individual of another state or of a foreign state against one of the United States.[3] Now, suppose that a state takes property without due process of law for its own use, or passes a law impairing the obligation of its own contract, what recourse has the individual against such action? If a statute passed by a state takes property without

[1] See K. Singewald: "The Doctrine of Non-Suability of the State in the United States," p. 17.

[2] See Macmaster: "History of the People of the United States," vol. II. p. 186.

[3] Note the case of Hans v. Louisiana, 134 U. S. 1, 33 L. ed. 842, 10 Sup. Ct. Rep. 504, where it was decided that the 11th Amendment likewise extended to suits brought by citizens of any particular state against that state.

due process of law, or impairs the obligation of contracts, it is unconstitutional, even though the state itself be a party to the proceedings. At the same time, if the action to prevent the enforcement of the law amounts to a suit against the state, it cannot be maintained. Shall the immunity from judicial process be upheld, or shall the prohibitions relative to contracts and due process of law be enforced? It is readily seen that in reality one or the other of these provisions must to a certain extent yield; otherwise the situation is like that of an irresistible force meeting an immovable body.

If, therefore, it can be shown in a particular case that the state's contract has been impaired, and if at the same time it can be effectively argued that the action taken to render void the impairment of the obligation of a contract is against the state, it is clear that it devolves upon the court to say which provision of the Constitution must be upheld. Yet if the court can find some ground upon which action can be taken, so that laws impairing the obligation of a state's contract, or laws taking property for the state without due process of law, may have their constitutionality tested without involving suits against states, the problem is solved, and the court will no longer be open to the charge of arbitrarily choosing between two equally significant principles. I fear that the cases in which the question of suability has been the point at issue give greater evidence of the court's having adopted the arbitrary course. At least, to the mind of the writer, they do not show that the court has succeeded in finding a ground upon which both constitutional guaranties can in every instance be sustained.

There have been a number of cases before the court involving the question of suability. But among them the following stand out distinctively: Osborn v. Bank of United States, 9 Wheat. 738, 6 L. ed. 204; Louisiana v. Jumel, 107 U. S. 711, 27 L. ed. 448, 2 Sup. Ct. Rep. 128; and Ex parte Young, 209 U. S. 123, 52 L. ed. 714, 28 Sup. Ct. Rep. 441, 14 Ann. Cas. 764, 13 L.R.A.(N.S.) 932.

The Osborn Case arose from the effort of the state of Ohio to impose a tax of $50,000 a year on each branch of the Bank of the United States situated in Ohio. The bank brought suit in the circuit court of the United States for an injunction to restrain the auditor from proceeding to collect the tax. With knowledge that the injunction had been allowed, although not yet issued, the agents of the state proceeded to collect the tax, or rather to seize funds for its satisfaction. Whereupon the circuit court issued a decree that the money taken should be restored to the bank. The case was appealed to the Supreme Court of the United States on the ground that the action taken in the circuit court was a suit against the state of Ohio, and the Supreme Court sustained the action of the circuit court. The following utterance of Chief Justice Marshall in this case has been widely quoted: "If the state of Ohio could have been made a party defendant, it can scarcely be denied that this would be a strong case for an injunction. The objection is that, as the real party cannot be brought before the court, a suit cannot be sustained against the agents of that party; and cases have been cited to show that a court of chancery will not make a decree unless all those who are substantially interested be made parties to the suit. This is certainly true where it is in the power of the plaintiff to make them parties; but if the person who is the real principal, the person who is the true source of the mischief, by whose power and for whose advantage it is done, be himself above the law, be exempt from all judicial process, it would be subversive of the best established principles to say that the laws could not afford the same remedies against the agent employed in doing the wrong, which they would afford against him could his principal be joined in the suit."

The case of Louisiana v. Jumel arose from the effort of the state of Louisiana to take steps which amounted to a repudiation of its public debt. By a constitutional change the state materially altered provisions for a previous bond issue, diminishing the value, and in some instances destroying the value, of credit obligations in the hands of possessors. Hence the holders of the paper sought through the United States circuit court

to force the treasurer to make the payments in accordance with the law as it existed before the new Constitution went into operation, on the ground that the later constitutional provisions impaired the obligation of contracts. The plea of the treasurer that such a proceeding amounted to a suit against the state was sustained by the United States Supreme Court. In distinguishing between this case and the Osborn Case the court said: In the Osborn Case "the object was to prevent money which had been unlawfully taken out of the bank by the officers of the state from getting into the treasury. . . . Thus the money seized was kept out of the treasury, because if it got in, it would be irretievably lost to the bank since the state could not be sued to recover it back. No one pretended that if the money had been actually paid into the treasury, and had become mixed with the other money there, it could have been got back from the state by a suit against the officers. They would have been individually liable for the unlawful seizure and conversion, but the recovery would be against them individually for the wrongs they had personally done, and could have no effect on the money which was held by the state."

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The case of Ex parte Young arose from the determination of a railroad company to prevent the attorney general of the state of Minnesota from enforcing a statute of that state which was confiscatory in nature, and hence averred to be unconstitutional on the ground that it took property without due process of law. An injunction was issued by the United States circuit court to prevent the officers of the state from enforcing the statute. The attorney general pleaded that the action taken against him through the circuit court was a suit against the state. Upon appeal to the Supreme Court of the United States the action of the circuit court was sustained. In rendering the decision the court spoke as follows: "We have, therefore, upon this record, the case of an unconstitutional act of the state legislature, and an intention by the attorney general of the state to endeavor to enforce its provisions, to the injury of the company, in compelling it, at great expense, to defend legal proceedings of a complicated and unusual character, and involving questions of vast importance to all employees and officers of the company, as well as to the company itself. The question that arises is whether there is a remedy that the parties interested may resort to, by going into a Federal court of equity, in a case involving a violation of the Federal Constitution, and obtaining a judicial investigation of the problem, and, pending its solution, obtain freedom from suits, civil or criminal, by a temporary injunction, and if the question be finally decided favorably to the contention of the company, a permanent injunction restraining all such actions and proceedings."

The above quotations are sufficient to show the nature of the distinctions which the Supreme Court has made to sustain its position in particular cases. In the

Jumel Case it was asserted that money once in the treasury of the state could not be forced out by action taken against the treasurer of the state, although the statute which controlled the treasurer in his refusal to pay out the money was unconstitutional in its nature. But if, as the court asserted to be the situation in the Osborn Case, the money had not yet been placed in the state treasury, action could be taken against an officer to force him to refund money acquired in pursuance of an unconstitutional state statute, for if once actually in possession of the state, it would be irretrievably lost to its rightful owner, for then the action necessary to recover it back would involve a suit against the state. The case of Ex parte Young in some respects resembles the Osborn Case. In both cases the enforcement of the state statutes was prevented through injunctions issued against state officers in their official capacity. But the Young Case appears to the writer to be more radical than the Osborn Case, since in the later case the distinction as to actual possession could not be made. Here the injunction had, furthermore, been issued before the attorney general took any definite steps in the direction of the enforcement of the law, whereas in the Osborn Case property had been seized in accordance with the provisions of the statute before the injunction was issued.

If we grant that the Osborn Case sets a precedent for the Young Case, and that the Jumel Case is to be distinguished from them, reference to other cases will show that the court has not held rigidly to these differentiations. In the case of Re Ayers, 123 U. S. 443, 31 L. ed. 216, 8 Sup. Ct. Rep. 164, the court refused to sustain an injunction issued by a United States circuit to the attorney general of the state of Virginia, on the ground that by this action the state was coerced at the instance of individuals, a proceeding forbidden by the 11th Amendment.[4] The decision here seems to the writer to be at variance with both the decision in the Osborn Case and the Young Case. Again, in Tindal v. Wesley, 167 U. S. 204, 42 L. ed. 137, 17 Sup. Ct. Rep. 770, a suit was sustained against officers of the state of South Carolina, to recover back from the state lands illegally obtained possession of by the state. Here the doctrine stated by the court appears to be at variance with that laid down in Louisiana v. Jumel. Numerous other cases could be cited in this connection, but the scope of this paper does not allow their consideration.

What, then, must be said regarding the conflicting provisions of the Constitution to which allusion was made early in this paper? It is evident, to say the least, that the status of the law relative to these provisions is unsatisfactory. If any clear sequence has been established through the numerous cases in which the question of nosuability of states has been pleaded, it is almost impossible to state it. It is, moreover, doubtful, if such a sequence could be established, whether it would be consistent with the the spirit of the Constitution. Throughout the decisions, however, one thing is evident, namely, that when the court has been more liberal in allowing suits to stand against officers, greater justice has been done to the individual. In many instances wherein the court has refused to sustain action against officers, actual hardship has been wrought upon individuals through legislation passed by the states clearly unconstitutional.

It would appear, therefore, that the doctrine that a suit against an officer of a state, even though in his official capacity, should, as a general proposition, be accepted, but not without some qualification. Later developments have shown that the court very likely went too far when, in the Young Case, it gave opportunity for an individual through an appeal to a lower Federal court to halt the action of the state authorities in their effort to enforce state laws. Is there a solution to the problem, other than simply the assertion that a suit against an officer is not to be construed a suit against the state? Should the court assert, once and for all, as was done in the Osborn Case, that it will not look beyond the record? It appeared to the late Associate Justice Harlan that such a doctrine was too broad. Although in many dissents he held the above view, yet later he de-

[4] See 2 Willoughby on the Constitution, pp. 1189–1191.

parted from it.[5] In the end his doctrine seems to have been that if it could be pleaded in court that a definite act on the part of an officer, taken in pursuance of a statute or constitutional provision of a state, the constitutionality of which was challenged, had been taken, the process against the officer should not be termed a suit against a state. Justice Harlan seemed to imply that an injunction issued against the agents of the state, at the instigation of an individual, by a court of the United States, before the agents of the state had undertaken to put any provision of the enactment into operation, was too powerful a weapon to put into the hands of an individual to wield against the authority of a state. It seems to the writer that the solution to the problem is to be found in just such a distinction.

[5] See F. B. Clark: "The Constitutional Doctrines of Justice Harlan," chap. I.

The Birth of Justice

Wild was the waste in wood and fen
Where dwelt the savage primal men.
No righteous rule secured a right,
No law was there but law of might;
The strongest only could exist
Where reigned the Kings of Club and Fist.

A chief one morn in woe bewailed
The loss that civil strife entailed.
Low was his toll of tribute spoil,
He needed slaves for tax to toil.
Strife kept his warriors from the chase
And harmed the progress of his race.

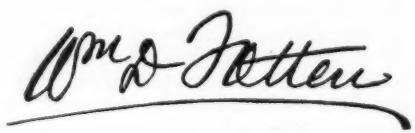
'T was not the want of lust for blood
That prompted his judicial mood;
Nor man's contempt for wounds or pain
Nor horror of the victims slain.—
It marred his peace and hurt his pride
To put the spear and club aside.

So fiercely glowed his heart of hate
He heard no moan of widowed mate;
He dreaded more the victor's cheers,
Than helpless orphans' cries or tears;
He feared the cost of passion's haste
And counted loss of battle waste.

'T was fear, not love, that ruled his mind
And checked the fury of his kind,
And selfishness that soonest saw
The need of arbitration's law.
And *might* that named the judging chief
To grant his fighting hordes relief.

And thus was noble Justice born
When tribes were by dissension torn;
And ere the scales and balance came,
'T was meted out without a name.
And ere the Goddess yet was blind
It rudely lived to bless mankind.

Gone are the days of club and spear,
The days of love and peace seem near,
Yet with our songs of peace are blent
The thunders from wars' battlement.
God haste the day when shall depart
All hate from every human heart,
When Peace in laurel crown is wreathed
And every warrior's sword is sheathed.



A Brief Statutory History of the United States Department of Agriculture

BY FRANCIS G. CAFFEY

Solicitor of the Department of Agriculture

THE development of the statutes under which the United States Department of Agriculture has come to occupy its present broad field has been neither uniform nor systematic. On its legal side, the department, like Topsy, has just "growed." In a crude, but only very crude, way, the history of the legislation affecting its work may be divided into four periods: First, anticipatory, prior to 1839; second, preliminary, from 1839 to 1862; third, formative, from 1862 to 1889; and fourth, expansive, since 1889.[1]

Anticipatory Period.

For about sixty years subsequent to the Revolution, the general interests of agriculture were left almost entirely to individual initiative. Federal activity was confined to relatively narrow limits, and was merely sporadic. There was no committee on agriculture in the House until 1820,[1a] nor in the Senate until 1825.[2]

Shortly after the Revolution, following the example of Franklin while in England as agent of the colony of Pennsylvania during the years 1764 to 1775, American consuls and naval officers commenced the custom of sending home foreign seeds and cuttings for new crops, and of aiding in the introduction into the United States of new breeds of domestic animals. Even such small governmental participation was, in the beginning, rather extra-official.

From an early date after its acquisition, the public domain was availed of as a means of benefiting agriculture. In 1817 Congress provided for the allotment of certain lands, within what was then known as the Mississippi Territory, to French immigrants for the purpose of promoting the cultivation of the vine and the olive.[3] In 1838, in recognition of services in introducing useful tropical plants into the United States, rendered by Henry Perrine, Congress granted to him and his associates a body of land in the southern extremity of the Peninsula of East Florida, for the propagation and cultivation of such plants.[4] Provisions were also made for the disposition of the public lands, which the Federal government had acquired by the cession of the Northwest Territory, by the Louisiana Purchase, and otherwise, to settlers who would develop and improve them.

Likewise, during these years, the policy of encouraging agriculture among the Indians was inaugurated.[5]

Commencing very soon after the organization of the Federal government, many important inventions of agricultural implements were made in the United States. Models of these were exhibited at the Patent Office in Washington, with the view of attracting the attention and interest of visitors, and thereby disseminating a knowledge of their use and

[1] Existing laws collected in Laws Applicable to the United States Department of Agriculture (1913), with 1st, 2d, and 3d Supplements thereto, compiled by Otis H. Gates, under the direction of the Solicitor of the Department.

[1a] May 3, 1820, Annals of Congress, 16th Congress, 1st session, part 2, p. 2179.

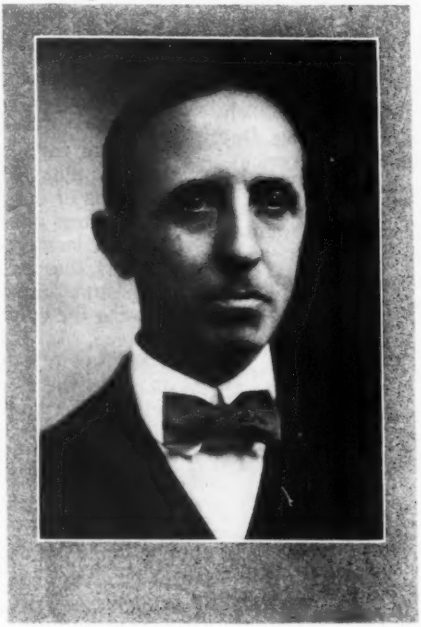
[2] Register of Debates in Congress, 19th Congress, 1st session, cols. 5–7.

[3] Act of March 3, 1817, 3 Stat. at L. 374.

[4] Act of July 7, 1838, 5 Stat. at L. 302.

[5] Act of March 1, 1793, 1 Stat. at L. 329, 331; Act of March 3, 1819, 3 Stat. at L. 516; Act of May 7, 1822, 3 Stat. at L. 690, etc.

practical application. In 1836 the Commissioner of Patents, independently of his office, assumed the responsibility of accepting contributions of new and valuable seeds, and of distributing them among farmers throughout the country, and, in his report to Congress, urged the creation of a depository to receive and dispense articles of this kind.[6] The indebtedness of the people to this official for his activities along these lines has never been fully recognized, and overstatement of it would be difficult. In 1839 Congress made an appropriation of $1,000 for "the collection of agricultural statistics, and for other agricultural purposes."[7] A similar item was included in the appropriations for the fiscal years 1842[8] and 1844,[9] and has been repeated annually ever since the latter date.[10] The act of 1839 was the earliest statute containing even a suggestion of comprehensive dealing with the subject of agriculture by the Federal government. It is notable that the $1,000 was taken from the patent fund, which consisted of moneys deposited in the Treasury on account of applications for patents. This was the real beginning of what has now grown into a vast national enterprise.



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FRANCIS G. CAFFEY

The money first voted by Congress was expended to secure information as to the condition of crops in this country, and as to agricultural subjects in general. This was obtained principally through correspondence, at home and abroad, and the solicitation of contributions from scientific and practical agriculturalists. The material collected was published annually in the report of the Commissioner of Patents. A part of the appropriation was also spent in collecting and distributing seeds, although this purpose was not expressly provided for by Congress until 1852.[11] For more than twenty years subsequent to the act of 1839 the collection of agricultural statistics and the purchase and distribution of seeds constituted the principal lines of agricultural work carried on by the Federal government; but from time to time during this period Congress appropriated small sums for other objects, such as investigations for promoting agriculture and rural economy,[12] the collection and report of information in relation to the consumption of cotton in the several countries of the world,[13] tests of the practicability of preparing flax and hemp as a substitute for cotton,[14] and the introduction and protection of insectivorous birds.[15]

The several funds appropriated were expended, and the work involved was carried on, down to 1862, under the direction of the Commissioner of Patents, whose office was originally in the Depart-

[6] House Document No. 112, 25th Congress, 2d session, dated Jan. 1, 1838, for year 1837.
[7] Act of March 3, 1839, 5 Stat. at L. 353, 354.
[8] Act of Aug. 26, 1842, 5 Stat. at L. 523, 533.
[9] Act of March 3, 1843, 5 Stat. at L. 630, 642.
[10] Act of June 17, 1844, 5 Stat. at L. 681, 687.
[11] Act of Aug. 31, 1852, 10 Stat. at L. 76, 95.
[12] Act of May 15, 1856, 11 Stat. at L. 10, 14.
[13] Act of March 3, 1857, 11 Stat. at L. 221, 226.
[14] Act of March 1, 1862, 12 Stat. at L. 348, 350.
[15] Act of March 1, 1862, supra.

ment of State, and later, in 1849, transferred to the newly created Department of the Interior.

Formative Period.

By an act of May 15, 1862,[16] since generally called the organic act, the activities of the government affecting agriculture were placed under a separate and distinct organization, known as the Department of Agriculture, in charge of a Commissioner of Agriculture. It did not rank, however, with the so-called executive departments, and the Commissioner was not entitled to a seat in the President's Cabinet.

The duties of the new department, prescribed by the organic act, were "to acquire and to diffuse among the people of the United States useful information on subjects connected with agriculture in the most general and comprehensive sense of that word, and to procure, propagate, and distribute among the people new and valuable seeds and plants." The Commissioner of Agriculture was also directed to acquire and preserve all information concerning agriculture which he could obtain by means of books and correspondence, by practical and scientific experiments, by the collection of statistics, and by any other appropriate means within his power; to collect, as he might be able, new and valuable seeds and plants; to test, by cultivation, the value of such of them as might require such tests; to propagate such as might be worthy of propagation, and to distribute them among agriculturalists.

While the department was under the direction of a Commissioner, the scope of its work was extended to cover many new objects of a special nature connected with the agricultural and live-stock interests of the country. Chief among these were investigations of diseases of cattle and domesticated animals, and of means for preventing, suppressing, and destroying such diseases,[17] of diseases of fruits, fruit trees, grains, and other useful plants,[18] of the habits of insects injurious to agriculture and horticulture,[19] of the culture and manufacture of tea,[20] of the culture and manufacture of silk,[21] of encouragement of the culture of cotton and tobacco,[22] of conditions and methods of forestry,[23] of the manufacture of sugar from sorghum and sugar beets,[24] of their cultivation,[25] of the introduction of forage plants and grasses to increase the grazing capacity of arid districts,[26] of the adulteration of food,[27] of the textile strength of wool and other fibers,[28] of studies in economic ornithology and mammalogy,[29] of the reclamation of arid and waste lands,[30] and of the agricultural needs of country west of the Rocky Mountains,[31] the collection of statistics relating to oleomargarin, butterine, and similar products,[32] experiments in agricultural chemistry,[33] and the supervision of the work of agricultural experiment stations established by Congress in the colleges of the various states.[34]

During this period the work of the department became so enlarged and varied that it was necessary to divide it into distinct units. In 1880 Congress created six divisions,—chemical, seed, entomological, statistical, microscopical, and botanical,—in addition to the office of the Commis-

[16] Act of May 15, 1862, 12 Stat. at L. 387, Rev. Stat. §§ 520, 521.

[17] Act of March 3, 1869, 15 Stat. at L. 283, 298; Act of June 20, 1878, 20 Stat. at L. 206, 240.

[18] Act of June 30, 1886, 24 Stat. at L. 100.

[19] Act of June 19, 1878, 20 Stat. at L. 178, 204.

[20] Act of June 16, 1880, 21 Stat. at L. 292, 294.

[21] Act of Jan. 20, 1883, 22 Stat. at L. 408, 410; Act of June 5, 1884, 23 Stat. at L. 36, 39.

[22] Act of Feb. 25, 1863, 12 Stat. at L. 682, 691.

[23] Act of Aug. 15, 1876, 19 Stat. at L. 143, 167.

[24] Act of March 14, 1864, 13 Stat. at L. 22, 23; Act of June 16, 1880, 21 Stat. at L. 292, 295.

[25] Act of March 3, 1881, 21 Stat. at L. 381, 384.

[26] Act of June 30, 1886, supra.

[27] Act of June 30, 1886, supra.

[28] Act of June 16, 1880, supra.

[29] Act of March 3, 1885, 23 Stat. at L. 353, 354; Act of June 30, 1886, supra.

[30] Act of June 16, 1880, supra.

[31] Act of March 3, 1881, supra.

[32] Act of May 19, 1882, 22 Stat. at L. 89, 90.

[33] Act of Feb. 25, 1863, supra.

[34] Act of March 2, 1887, 24 Stat. at L. 440.

sioner, the experimental garden and grounds, laboratory, museum, and library.[35]

In 1884 a Bureau of Animal Industry was created, to be in charge of a veterinary surgeon appointed by the Commissioner of Agriculture.[36] It was made the duty of the chief of the new bureau to investigate and report upon the condition of domestic animals of the United States and their protection and use, to inquire into and report the causes of contagious, infectious, and communicable diseases among them, and the means for the prevention and cure of the same, and to collect such information on these subjects as should be valuable to the agricultural and commercial interests of the country.

The first appropriation for investigations on forestry subjects was made in 1876.[37] In 1886 a division of forestry was formed to carry on this work.[38]

In 1886, also, the divisions of economic ornithology and mammalogy,[39] and of pomology,[40] were created.

Expansive Period.

In 1889 the department became an executive department, having at its head a Secretary, who occupies a place in the President's Cabinet.[41] Its functions have grown to such an extent that now they touch almost all lines of agricultural endeavor of general interest to the citizens of the United States, as well as other lines of activity related to agriculture.

The units of organization of the department have been changed from time to time, to meet growing conditions, and, as at present recognized by Congress, are sixteen, composed of ten bureaus, including the Forest Service and the States Relations Service, four offices, two divisions, and the library.

The agricultural appropriation act for the fiscal year 1915[42] authorized and directed the Secretary of Agriculture to prepare and submit to Congress a plan for reorganizing, redirecting, and systematizing the work of the department as the interests of economical and efficient administration may require.

The plan of reorganization was submitted in the book of estimates of appropriations for the fiscal year 1916, as a basis for incorporation in the agricultural appropriation act for that year, if approved by Congress, and has been approved by the act of March 4, 1915.[43]

The previously existing form of organization, with its several bureaus, offices, and divisions, was not changed, except that one office was made a bureau under a new name, an additional office was created, and new designations were given to two other offices.

The important changes involve, first, the reapportionment of certain lines of work among different bureaus and offices, with the view of avoiding any unnecessary duplication, and of placing each line in the subdivision best adapted for handling it; and, second, the division of the activities of each bureau and office into three distinct and logical groups, comprising its regulatory, research, and extensional or educational functions.

The general aims of the plan are to systematize the organization of the department, and to co-ordinate and develop all its units to the point of highest usefulness to the people of the United States.

During its early stages the work of the department was exclusively, and in much the greater part is still, purely investigative, experimental, and educational. The legal authority for all such activities follows as a mere incident to the appropriations made by Congress for carrying them on. No substantive laws, other than those generally governing the conduct of officials and the expenditure of money, alike applicable to all departments of the government, are essential in respect to them. In fact, many of the bureaus of the Department of Agriculture exist solely by virtue of the annual appropriation acts, and would be com-

[35] Act of June 16, 1880, supra.
[36] Act of May 29, 1884, 23 Stat. at L. 31.
[37] Act of Aug. 15, 1876, supra.
[38] Act of June 30, 1886, supra.
[39] Act of June 30, 1886, supra.
[40] Act of June 30, 1886, supra.
[41] Act of Feb. 9, 1889, 25 Stat. at L. 659.
[42] Act of June 30, 1914, 38 Stat. at L. 415, 441.
[43] Act of March 4, 1915, 38 Stat. at L. 1086.

pletely disestablished by mere failure of Congress to provide funds for their continuance, without the repeal of any existing statute.

As time has gone on, however, Congress has conferred on the Secretary of Agriculture, and occasionally on a bureau of the department, duties and powers of a wholly different nature, and having much to do with the conduct of citizens. In all such instances the laws relate directly to activities already in progress in the department. Doubtless, because of the accumulated scientific knowledge and the existence of appropriate governmental organizations in the department necessary for the proper enforcement of statutes of this character, Congress has deemed it more in the interest of both economy and efficiency to make available the services of the department, than to create wholly new machinery, to carry out its purposes.

A brief *résumé* of the chief lines of work, other than regulative, conducted by each of its branches, is essential in order to convey a clear idea of the scope and character of the present activities of the department. The principal regulative activities of the department as a whole will be described separately.

Bureau Organization; administrative, scientific, and educational activities.

Secretary's Office.—The office of the Secretary exercises general supervisory authority and administrative functions respecting the entire personnel and work of the department. Such of the activities of this office as are not under the immediate charge of the Secretary or the Assistant Secretary are carried on through various subdivisions. These embrace the Office of the Chief Clerk, the Office of Information, the Office of Inspection, the Office of Exhibits, the Office of Forest Appeals, and the Office of the Solicitor.

The statutes affecting the department specifically mention the Chief Clerk[44] and the Solicitor.[45] Within the limitations imposed by these statutes, which are few, and by the civil service law, and to the extent that appropriations are available, the Revised Statutes confer on the Secretary complete power to organize his office as he deems best.[46] All of the officials of the department, except the Secretary, the Assistant Secretary, the Chief of the Weather Bureau, and the Solicitor, are in the classified civil service.

The Assistant Secretary may perform such duties as are assigned to him by the Secretary.[47] In case of the absence or disability of the Secretary, the Assistant Secretary may act as Secretary.[48] If both the Secretary and the Assistant Secretary be absent or disabled, the Chief of the Weather Bureau, the only other official of the department whose appointment is subject to confirmation by the Senate, may act as Secretary.

The Chief Clerk is charged by law with the supervision of the duties of the clerks in the department[48a] and the superintendence of its buildings.[48b] He enforces the general administrative regulations of the department, and makes provision for its services and supplies.

The legal work of the department is performed, in accordance with the act of May 26, 1910,[49] under the supervision and direction of the Solicitor, who is attached to the Secretary's office. This is large and increasing in volume, due principally to the numerous regulative acts, to the large amount of forest land and other property placed under the administration of the department, and to the great number of land titles to be examined, under the Weeks Forestry Law, in the White Mountains and in the Southern Appalachian region.

Office of Farm Management.—The Office of Farm Management, created in connection with the departmental reorganization in 1915, and which, administratively, is closely associated with the office of the Secretary, is engaged in investigating and encouraging the adoption

[44] Rev. Stat. §§ 522 and 523.

[45] Act of May 26, 1910, 36 Stat. at L. 416.

[46] Rev. Stat. §§ 161, 166, 169, 523; Act of March 4, 1907, 34 Stat. at L. 1256, 1280.

[47] Act of Feb. 9, 1889, supra; Act of March 4, 1907, supra.

[48] Rev. Stat. § 177.

[48a] Rev. Stat. §§ 173 and 174.

[48b] Act of April 23, 1904, 33 Stat. at L. 276.

[49] Act of May 26, 1910, supra.

of improved methods of farm management and farm practice, and in studying questions relative to the clearing of "logged-off" lands, with a view to their utilization for agricultural and dairying purposes.

Weather Bureau.—For many years prior to the establishment of the Department of Agriculture in 1862, the study of the climate and storms of this country had been encouraged by the several departments of the government, and by the Smithsonian Institution; information on these subjects was included, as agricultural statistics, in various reports of the Commissioner of Patents. Meteorological data gathered by the Smithsonian observers were published in the monthly reports of the Department of Agriculture from 1863 to 1872. In the latter year Congress made an appropriation to enable the Signal Office of the War Department to take observations and report on storms for the benefit of agriculture and commerce.[50] This work was conducted by the Signal Service of the Army from that time until 1890,[51] when it was transferred to the newly created Weather Bureau, in the Department of Agriculture.

This bureau is in charge of the forecasting of weather, the issuing of storm warnings, the display of weather and flood signals for the benefit of agriculture, commerce, and navigation, the gauging and reporting of rivers, the maintenance and operation of seacoast telegraph lines, the collection and transmission of marine intelligence for the benefit of commerce and navigation, the reporting of temperature and the rainfall conditions for the cotton interests, the display of frost and cold wave signals, the distribution of meteorological information in the interest of agriculture and commerce, the taking of such meteorological observations as may be necessary to establish and record the climatic conditions of the United States or as are essential for the proper execution of the foregoing duties, and, in general, investigations in meteorology, climatology, seismology, evaporation, and aerology.

Bureau of Animal Industry.—The Bureau of Animal Industry is primarily concerned with the promotion of the livestock and meat industries of the United States. It conducts scientific investigations of the causes, prevention, and treatment of diseases of domestic animals; investigates the actual existence of communicable diseases of such animals, and aids in their control and eradication; and carries on investigations and experiments in the dairy industry, animal husbandry, and the feeding and breeding of animals, including poultry and ostriches. It also is in direct charge of the important work of administering the meat inspection act, the cattle quarantine act, the twenty-eight hour act, the diseased animal transportation acts, the virus act, and the act regulating the shipment in interstate or foreign commerce of process or renovated butter. The inspection and quarantine work involved in the administration of these statutes is notably extensive.

Bureau of Plant Industry.—The Bureau of Plant Industry was originally formed by a combination of five separate divisions in 1901,[52] and is chiefly interested in the problems of agricultural production. It conducts investigations of the causes, prevention, and treatment of diseases of plants, including fruit, ornamental, shade, and forest trees; of crop physiology and breeding; of soil bacteriology; of plant nutrition; of soil fertility; of the acclimatization and adaptation of crop plants introduced from tropical regions; of drug and poisonous plants; of plant physiology and fermentation; of crop technology; of fiber plants; of biophysics; of seed testing; of plants suitable for paper making; of the improvement and production of cereals; of alkali and drought-resistant crops; of economic and systematic botany; of the improvement and utilization of wild plants and grazing lands; of dry-land agriculture; of western irrigation; of the utilization of land reclaimed under the reclamation act and of other areas in the arid and semi-arid regions; of pomology; of horticulture; of the introduction into

[50] Act of June 10, 1872, 17 Stat. at L. 347, 366.

[51] Act of Oct. 1, 1890, 26 Stat. at L. 653.

[52] Act of March 2, 1901, 31 Stat. at L. 922.

the United States of foreign seeds and plants; of forage crops; of cotton; of tobacco; of flax; of broom corn; of sugar beets; and of sugar-cane syrup. This bureau is also in charge of the department's experimental garden and grounds, the experimental farm at Arlington, Virginia, the annual governmental distribution of seeds, and the administration of the so-called seed importation act.

Forest Service.—The Forest Service is an evolution from the activity of investigating forestry subjects, that was begun in the department in 1876, and was continued in charge of a division of forestry in 1886. The name of this branch was changed to the Bureau of Forestry in 1902,[53] and to the Forest Service in 1905.[54]

For many years after its inception this work was purely investigative, but it paved the way for the establishment of the present system of national forests.

The investigative, experimental, and educational work now carried on by the Forest Service includes investigations of methods for wood distillation, for the preservative treatment of timber, and for timber testing; the testing of woods to ascertain if they be suitable for paper making; investigations and tests within the United States of foreign woods of commercial importance to industries in the United States; other investigations and experiments to promote economy in the use of forest products; experiments and investigations of range conditions within the national forests and elsewhere on the public range, of methods for improving the range by reseeding, regulation of grazing, and other means, and of seeding and tree planting within the national forests; silvicultural, dendrological, and other experiments and investigations to determine the best methods for the conservative management of forests and of forest lands; the estimating and appraising of timber and other resources on the national forests; and miscellaneous forest investigations.

The first forest reservation was created in California by an act of Congress approved September 25, 1890.[55] Previously, from time to time, Congress had passed various acts relating to the protection, use, and disposal of the timber and timbered lands of the United States. As early as 1817 an act was passed providing for the reservation of public lands containing live oak and red cedar timber for the use of the Navy, and prohibiting trespass on the reservations under severe penalties;[56] but not until nearly three quarters of a century later did Congress enact a broad, general statute on the subject.

In 1891 an act was passed authorizing the President to set apart and reserve by public proclamation, in any state or territory having public land bearing forests, any part of the public lands wholly or in part covered with timber or undergrowth, whether of commercial value or not, as public reservations.[57] Almost all of the national forest reservations have been created under this act; some have been created by special act of Congress. By reason of certain amendments to the act of 1891, no forest reservation can be established in the states of Washington, Oregon, California, Idaho, Montana, Wyoming, and Colorado without special act of Congress.[58] There are now (July 1, 1915) 155 national forests, so designated since 1907, including those in Alaska and Porto Rico, with a total gross area of 184,611,596 acres, and a net area of 163,274,063 acres. In addition, there are in the eastern states 17 areas, embracing 1,396,549 acres; consisting of 348,291 acres already acquired, 983,290 acres covered by existing contracts of purchase, and 32,485 acres approved for purchase by the National Forest Reser-

[53] Act of June 3, 1902, 32 Stat. at L. 295.

[54] Act of March 3, 1905, 33 Stat. at L. 861, 872.

[55] Act of Sept. 25, 1890, 26 Stat. at L. 478.

[56] Act of March 1, 1817, 3 Stat. at L. 347; Rev. Stat. § 2450.

[57] Act of March 3, 1891, 26 Stat. at L. 1095.

[58] Act of March 4, 1907, 34 Stat. at L. 1256, supra; Act of June 25, 1910, 36 Stat. at L. 847; Act of August 24, 1912, 37 Stat. at L. 497.

vation Commission, under the Weeks act, and 32,483 acres, known as the Olmstead lands (the title to a portion of which is in dispute), transferred by special act of Congress to the Secretary of Agriculture for administration.

Although the act of 1891 gave the President power to create forest reservations, no provision was made for their administration or use until the passage of the act of June 4, 1897.[59] The latter declared that no public forest reservation shall be established except to improve and protect the forests within the reservations, or for the purpose of securing favorable conditions of waterflow, and to furnish a continuous supply of timber for the use and interests of citizens of the United States. These, broadly, are the purposes for which national forests are created and administered.

The administration of the forest reservations was conferred by the act of 1897 on the Secretary of the Interior. It placed upon him the duty to make provisions for the protection of the public forests and forest reservations against destruction by fire and depredations, and empowered him to make such rules and regulations and establish such service as will insure the objects of such reservations, namely, to regulate their occupancy and use, and to preserve the forests thereon from destruction, and to sell the dead, matured, or large growth of trees found upon such reservations for the purposes of preserving the living and growing timber and promoting the younger growth. The Secretary was also authorized to permit, under regulations to be prescribed by him, the use of timber and stone on such reservations by bona fide settlers, miners, residents, and prospectors for minerals for certain domestic purposes, such timber to be used within the state or territory where the reservation is located.

The Secretary of the Interior continued until 1905 to perform the duties prescribed by the act of 1897, the Department of Agriculture merely giving to his department expert advice on forestry questions. In 1905 [60] the administration of forest reservations was transferred to the Secretary of Agriculture, with whom the power has since remained.

The administration, protection, and improvement of the national forests are in direct charge of the Forest Service, and comprise the principal part of the work of that bureau. The duties involved are manifold, and in addition to those already described, which were transferred from the Secretary of the Interior, include the reseeding and replanting of forest areas, the construction and maintenance of roads, trails, bridges, fire lanes, telephone lines, cabins, fences, and other improvements on national forests, and the exercise of administrative functions under various acts that have been passed since 1897 relating to the control and utilization of the national forests.

By virtue of his authority to regulate the use and occupancy of the national forests, the Secretary of Agriculture administers large areas of lands for grazing purposes by a system of permits or licenses to stock owners. In addition, permits are granted by him, under prescribed conditions, to use and occupy national forest lands for practically all purposes not inconsistent with the objects of the reservations, including, among others, schools, churches, factories, power plants, transmission lines, reservoirs, conduits, stores, residences, and roadways. During the course of its administration of the national forests, an efficient and extensive system of fire protection has been developed by the Forest Service, and the sale and free use of national forest timber have grown into a large and important business.

There is a large body of laws, enacted since 1897, relating to national forests, aimed to carry out the fundamental purposes for which they were created and at the same time to permit the utilization of their resources consistent with a policy of conservation. All mineral lands therein are subject to location and entry.[61] Lands within their limits, chiefly valuable for agriculture, may be opened to entry under the homestead laws.[62]

[59] Act of June 4, 1897, 30 Stat. at L. 11, 34.
[60] Act of Feb. 1, 1905, 33 Stat. at L. 628.
[61] Act of June 4, 1897, 30 Stat. at L. 1, 7.
[62] Act of June 11, 1906, 34 Stat. at L. 233

Rights of way may be acquired, under certain conditions, for railroads,[63] for irrigation purposes,[64] for municipal and mining purposes,[65] for milling and the reduction of ores,[66] for poles and lines for telegraph and telephone purposes,[67] and for the generation and distribution of electrical power,[68] and, under a recent act,[69] permits may be granted, for periods not exceeding thirty years, for the use and occupancy of national forest lands for summer homes, hotels, stores, or other structures needed for recreation or public convenience.

The national forests in the western states, Alaska, and Porto Rico were all created by the reservation of portions of the public lands of the United States. By act of March 1, 1911,[70] commonly known as the Weeks law, Congress authorized the purchase in behalf of the United States of lands situated on the watersheds of navigable streams, in states consenting to such acquisition, for the purpose of preserving the navigability of such streams. The act further provides that, after purchase, these lands shall be permanently reserved, held, and administered as national forest lands under the various laws relating to national forests. Under it large areas have been acquired, or are in the course of acquisition, by the United States in the eastern states, principally in the Southern Appalachian and the White Mountains. These areas are administered by the Forest Service.

Bureau of Chemistry.—The Bureau of Chemistry is an outgrowth of the appropriation made in 1848[71] for chemical analysis of vegetable substances produced and used for the food of man and animals in the United States. It is engaged in chemical investigations for other departments of the government; in investigations in agricultural chemistry and the character of the chemical and physical tests applied to American food products in foreign countries, and in the inspection, upon request, of such products before export; in investigations relating to poultry, eggs, fish, oysters, and shell fish; in biological investigations of food and drug products and substances used in the manufacture thereof; and in the study and improvement of methods of utilizing by-products of citrus fruits. In addition to its purely investigative work, this bureau administers the food and drugs act, involving the examination of numerous specimens of foods and drugs for the purpose of determining whether they are adulterated or misbranded within the meaning of the act.

Bureau of Soils.—The Bureau of Soils conducts chemical and physical investigations of soils, investigations of possible sources of natural fertilizers within the United States, and soil survey investigations, and assists in the examination and classification of agricultural lands in the national forests.

Bureau of Entomology.—The Bureau of Entomology conducts investigations relating to economic entomology, the history and habits of insects injurious or beneficial to agriculture, horticulture, and arboriculture, insects affecting the health of man and domestic animals, and the best means of destroying those found to be injurious. It is also engaged in checking the spread of the gypsy and brown tail moths.

Biological Survey.—The Bureau of Biological Survey is in charge of the maintenance of various game, mammal, and bird reservations established by Executive orders and by acts of Congress, including, among others, the Montana National Bison Range, the winter elk refuge in Wyoming, the Sully's Hill National Game Preserve in North Dakota, the Wind Cave Preserve in South Dakota, and the Aleutian Islands Reservation in Alaska. It conducts investigations of the food habits of North American birds and mammals in relation to agriculture, horticulture, and forestry, of biological subjects, including the relations, habits, geographic distribu-

[63] Act of March 3, 1899, 30 Stat. at L. 1214, 1233.
[64] Act of March 3, 1891, supra.
[65] Act of Feb. 1, 1905, supra.
[66] Act of Feb. 1, 1905, supra.
[67] Act of March 4, 1911, 36 Stat. at L. 1235, 1253.
[68] Act of Feb. 15, 1901, 31 Stat. at L. 709.
[69] Act of March 4, 1915, supra.
[70] Act of March 1, 1911, 36 Stat. at L. 961.
[71] Act of August 12, 1848, 9 Stat. at L. 285.

tion, and migrations of animals and plants, and of diseases of wild ducks in the Salt Lake Valley region in Utah; carries on experiments and demonstrations in destroying animals, injurious to agriculture and animal husbandry; makes investigations and experiments in connection with the rearing of fur-bearing animals; and co-operates with the local authorities in the protection of migratory birds. The bureau is also in charge of the administration of the Lacey act and the migratory bird act.

Bureau of Crop Estimates.—The present activities of the Bureau of Crop Estimates, formerly the Bureau of Statistics, are an outgrowth of the work initiated under authority of the original appropriation of $1,000 made in 1839 for the collection of agricultural statistics and other purposes. The bureau performs important services in securing and compiling data relating to agriculture, and particularly in making and publishing periodically crop and live stock estimates.

States Relations Service.—In 1862 [72] Congress granted to the several states portions of the public lands to be sold, the proceeds to be applied to the endowment, support, and maintenance of at least one college in each state, where the leading object should be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the legislatures of the respective states prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life. Appropriations of additional sums were made by Congress in 1890 [73] and in 1907 [74] for the more complete endowment and maintenance of these colleges.

In 1887 [75] Congress made appropriations providing, under prescribed conditions, for the establishment of agricultural experiment stations in the various land grant colleges created under the act of 1862. Their purpose was to aid in acquiring and diffusing among the people of the United States useful and practical information on subjects connected with agriculture, and to promote scientific investigation and experiment respecting the principles and applications of agricultural science. Additional appropriations were made for these agricultural experiment stations in 1906.[76]

The act of May 8, 1914,[77] commonly known as the Smith-Lever act, made appropriations, under prescribed conditions, for agricultural extension work to be carried on by the various land grant colleges in co-operation with the United States Department of Agriculture, consisting of the giving of instruction and practical demonstrations in agriculture and home economics to persons not attending, or resident in, said colleges in the rural communities, and imparting to such persons information on those subjects through field demonstrations, publications, and otherwise.

In the act of 1862 no provision was made for the exercise of Federal supervision or control of expenditures by the states of funds derived from the operation of the act. All that was required was that reports should be made annually of the progress of each college and of the sales of land scrip and the use made of the proceeds thereof. The act of 1887 likewise made no provision for effective control by the United States of expenditures of the funds appropriated by Congress. In addition to annual reports, it required the state experiment stations to publish bulletins periodically, and made it the duty of the Commissioner (now Secretary) of Agriculture to furnish certain forms, to indicate lines of inquiry, and to give advice and assistance. Some control of expenditures was reserved to the Federal government in the act of 1906, which, in addition to requiring annual reports of expenditures, made the payment of the yearly sums appropriated to each state and territory conditional upon the ascertainment by the Secretary of Agriculture that it had complied with the provisions of the act and

[72] Act of July 2, 1862, 12 Stat. at L. 503.
[73] Act of Aug. 30, 1890, 26 Stat. at L. 417.
[74] Act of March 4, 1907, 34 Stat. at L. 1256, 1281.
[75] Act of March 2, 1887, supra.
[76] Act of March 16, 1906, 34 Stat. at L. 63.
[77] Act of May 8, 1914, 38 Stat. at L. 372.

was entitled to receive its share of the appropriations for agricultural experiment stations. The Smith-Lever act of 1914, however, in addition to requirements and conditions similar to those imposed in the act of 1887, as a prerequisite to sharing in appropriations, provides in detail a comprehensive and effective scheme for supervision and the control of expenditures. It not only requires annual reports to be made by the agricultural colleges of receipts from all sources and expenditures for carrying out the objects of the act, but expressly limits the scope of activities of the colleges under the act to co-operative work carried on in such manner as shall be mutually agreed upon by each college and the Secretary of Agriculture, and makes advance approval by the Secretary of Agriculture of plans for the work to be carried on during each year an indispensable condition precedent to the payment to the state colleges of any of the funds appropriated by Congress.

The States Relations Service was created as a new bureau in connection with the reorganization of the department in 1915, and supersedes the Office of Experiment Stations. It carries out the details of the duties conferred on the Secretary of Agriculture under the acts providing for the establishment of land grant colleges in the various states, and for agricultural experiment stations in these colleges, and under the Smith-Lever act. It is also engaged in the establishment and maintenance of agicultural experiment stations in Alaska, Hawaii, Porto Rico, and Guam, in the conduct of farmers' co-operative demonstrations, in studying and demonstrating the best methods of meeting the ravages of the cotton boll weevil, in investigating and reporting upon the organization and progress of farmers' institutes and agricultural schools in the several states and territories, and similar organizations in foreign countries, and in investigations of improved methods of agricultural practice, and the relative utility and economy of agricultural products for food, clothing, and other uses in the home.

Office of Public Roads and Rural Engineering.—The first investigations by the department in regard to public roads were authorized, and commenced, in 1889.[78] This line of work is now carried on by the Office of Public Roads and Rural Engineering. Its name was changed from the Office of Public Roads in connection with the departmental reorganization in 1915, which involved the transfer thereto of certain activities of an engineering nature. It is one illustration of an office that has no independent statutory basis, but exists solely by virtue of annual appropriation acts. This office conducts inquiries in regard to systems of road management, investigations and experiments as to methods of road construction and maintenance, and road materials, and gives expert advice on these subjects. It also investigates and advises upon the various phases of farm irrigation, farm drainage, the drainage of swamp and other wet lands that may be made available for agricultural purposes, farm domestic water supply and drainage disposal, the construction of farm buildings, and other rural engineering problems involving mechanical principles.

Office of Markets and Rural Organization.—The Office of Markets and Rural Organization is one of the newer branches of the department, and deals with the problems of agricultural distribution and marketing, and the promotion of co-operative efforts among farmers. It is engaged in investigating and diffusing information on subjects connected with the marketing and distributing of farm and manufactured food products, the purchasing of farm supplies, and co-operation among farmers in matters of rural credits and other forms of co-operation in rural communities. It also conducts cotton investigations, and is in direct charge of the administration of the United States cotton futures act.

(To be Continued.)

[78] Act of Aug. 8, 1894, 28 Stat. at L. 264, 266.

The National Guard and the National Defense

BY MAJ. GEN. JOHN F. O'RYAN

Commanding National Guard, New York

IN ANY consideration of the subject of adequate National defense, the difficulty arises in properly interpreting the significance of the term "adequate." What will appear to be more than adequate to one mind will be regarded as wholly inadequate by another. There is one point of view, however, which cannot be disregarded in formulating a proper plan to provide adequately for the national defense, and that point of view is based upon cost. Several plans, more or less common in their essential details, have been advocated, which measure up to ideal military principles; but the cost involved in the application of such plans would seem to make their adoption improbable.

From the military point of view, the ideal military system is one based upon compulsory military training of the arms-bearing population. In our country, with its population of one hundred millions of people, this would mean on the basis of two years of training, a standing army of about two millions of men. The absurdity of this plan is apparent. If we adopt what has been termed a modified system of universal service, that is to say, limited universal service, we offer an anomalous plan, because, when universal service becomes limited, it ceases to be universal. The practical effect of this is that some of the arms-bearing population would be excused from giving up two years of their lives to the government service without compensation, while others would not enjoy that privilege. The result would be that those who are required to serve against their wishes would complain that favoritism effected the release of some, and that compensation should be accorded to those who serve. To adequately compensate the man who is compelled to serve against his wishes, so as to place him on an equality with the man who is excused from such service, would mean the expenditure of vast sums of money. The possible effect of such system would be that an army so organized would become a professional standing army, and not one based upon universal military service.

The plans to provide adequately for the National defense by a large increase of the regular Army, so as to bring it up to a size commensurate with the needs of the Nation, are open to the following criticisms:

That the military authorities admit that it is not possible to increase our regular Army above 140,000 men on a voluntary system, because the records of the Adjutant General's Office, covering a considerable period, indicate that an insufficient number of men are attracted to the service to produce the necessary numbers, in competition with the labor market.

It further appears that the cost of maintaining the present regular Army of 100,000 men is in excess of one hundred millions of dollars a year, and that each regular soldier costs the Government about $1,100 a year to maintain. To add 50,000 to the regular Army would cost a vast sum of money annually without solving the question of national defense, for the reason that such number of men would have no particular relation to the problem in hand. That number of men are lost in a few days' operations in the war abroad. What we need is a system

that will give us large numbers reasonably trained, properly organized, and efficiently equipped with the latest mechanism for conducting war.

It was doubtless considerations of this character which prompted the Secretary of War to advocate the organization of a National force of 400,000 men, to be composed of the arms-bearing population, adequately trained in a manner not to interfere seriously with their civil occupations. Many persons inquire why the National Guard was not utilized as the nucleus for this force, and the answer to such inquiries brings us to a consideration of the National Guard as an institution. The National Guard is really misnamed, in that it is technically, in a legal sense, at least, not a National force, but a force made up of 48 state armies. The Federal Constitution provides that the President may call forth the militia for three purposes, namely, to repel invasion, suppress insurrection, and to execute the laws; and the same instrument reserves to the states the appointment of the officers and the training of the militia, according to the discipline prescribed by Congress. Right here an interesting point is to be considered. The National Guard of the country is officially known in the War Department as the Organized Militia; and the assumption at the present time is that the National Guard is that portion of the militia of the Constitution which has been organized in accordance with the discipline prescribed by Congress. A distinction, however, exists between the National Guard and the militia of the Constitution. The National Guard is militia, in the same sense that the personnel of the regular Army are militia. That is to say, both of these organized military bodies are composed of men who come within the definition of militia; they are part of the arms-bearing citizenry of the nation.

In some of the literature on the subject of adequate military preparedness now appearing in public periodicals and pamphlets, quotations from "Upton's Military Policy of the United States" are made the basis for severe criticisms of the militia, coupled with references to the so-called Organized Militia of the present day, the inference being that the shortcomings of the militia of the Constitution referred to by Upton exist in the present force, and that its battle efficiency would probably prove no better than that of the militia of Queenstown Heights and Bladensburg. The fact is, however, that the so-called Organized Militia of the present day is not the militia of the Constitution, nor a development of it, but was originally organized as a protest against the worthlessness of the militia of the early days. The militia of the Constitution consisted, and still consists, of all male citizens between the ages of eighteen and forty-five years. By Federal statute, they were required to provide themselves with prescribed arms and equipment. Their drill and instruction were nominal. Their discipline—they had none. They were organized, on paper, into units, from the company to the division, and all were duly enrolled. In some of the older states, the fields are still pointed out where the local militia companies assembled on training days, and anecdotes of their "hay-foot, straw-foot" efforts at drill are still the subject of mirth. Training day was largely a lark. It was little wonder that these citizens, uninstructed, undisciplined, and poorly armed, should have frequently given miserable exhibitions of soldierly qualities, when called into active service for short periods. As a matter of fact, Upton traces most of the militia shortcomings of the early days to the short periods of enlistment, usually thirty, sixty, or ninety days.

After the War of 1812, many independent companies, troops, and batteries were formed by veteran officers of the Revolution and of the War of 1812, who by virtue of their experiences well understood the worthlessness of the undisciplined and untrained militia. Many of these independent companies drilled regularly under capable officers, and some of them acquired a very high state of discipline and efficiency. At first they were not recognized in any legal way, but, after a time, in recognition of services rendered here and there as a *posse comitatus,* they were given facilities for storage of arms and equipment, in the town hall or other public building. Later, they received financial aid and recog-

nition from the state. In most states these organizations became known as the National Guard. The result of their development, efficiency, and financial recognition was the gradual abandonment of the militia enrolment and the militia training day.

The militia of the Constitution, as a tangible military force, soon ceased to exist. The National Guard organizations thrived, and soon fell heir to the Federal appropriations made to the states for the support of the militia. The Federal government designated the recipient of these appropriations the "Organized Militia;" and so the National Guard of the country, although it was conceived in protest against the militia, has finally come to be officially known, to the War Department at least, as the Organized Militia. In most of the state laws, however, the organizations preserve their historical designation of National Guard.

The military student who fairly studies the militia of the Constitution and the development of the National Guard will find little in common between the untrained, undisciplined, and poorly armed bands which intermittently entered and left the service, and the twelve tactical divisions of the Organized Militia of the present day, the personnel of which is clothed, armed, and equipped in the same manner as the regular Army, who conform to the same drill, study the same text-books, and who with the regulars annually engage in field exercises, to the professional advantage of both.

The fact is, however, that the National Guard is not a Federal force. Any force, to be considered dependable for the conduct of war, should be a force which may be used by the Federal government as fully and to the same extent as the regular Army. Sometimes the best defensive in war is the strategical and tactical offensive. Situated as we are, our first-line troops should be available for extraterritorial use. They should not be tied down to the continental limits of the United States. A first requisite, therefore, for a dependable first line is its availability for use anywhere in the world. The National Guard of the country does not meet this requirement, for the Attorney General of the United States, whether correctly or incorrectly, has held that the militia may be called forth by the President only to repel invasion, suppress insurrection, or execute the laws, and that these functions have no extraterritorial application. It is no answer to this legal obstacle to point out that the Dick law provides that the National Guard *may* be used anywhere, and that in any event the officers and enlisted men constituting the militia accepted such provisions when they joined, and that they would volunteer to make their service available anywhere in the world. It is no answer, for the reason that the Dick law, to the extent mentioned, is unconstitutional; and, further, because a dependable military system cannot be built on an assumption that the men of the army at a time of crisis will voluntarily consent to do something which they cannot be legally required to do, and which it is essential they should do for the prompt initiation and prosecution of the war. There is one fact, however, which should simplify the determination of a remedy, and that is that the National Guard of the country quite generally believe that they can be required by the Federal government to render service anywhere in the world, and that they stand ready, able, and willing to render such service. On the other hand, the Federal government desires such service, and seeks means of effectively providing for it. There is, therefore, on this subject, a meeting of the minds between the War Department and the National Guard, and it remains only to provide a legal and adequate method of making the same effective. This should not be difficult.

It is another military axiom, that the power which is authorized to wage war is the power which should govern and co-ordinate the preparation necessary for the successful conduct of war. This means that the Federal government, which under the Constitution may alone declare and conduct war, should be charged in time of peace with the preparation of the agencies necessary for its conduct. In the military service nothing is done by indirection. It is essential that orders be promptly and efficiently carried out. Military authority is nec-

essarily mandatory and uncompromising in its nature. Where there has been a departure from this principle, lack of co-ordinated effort and control has resulted. If it is essential that the Federal government alone should govern its military forces and control their activities in time of war, it is equally essential that it should adequately control them in time of peace. So important is peace-time preparation believed to be, that it is said that a war is half won or half lost, when it is begun. The National Guard at present cannot meet this requirement, however willing its personnel may be to accept control by the War Department, for the reason that the Federal Constitution reserves to the states the training of the militia according to the discipline prescribed by Congress. Washington in this connection said: "A government whose measures must be the result of multiplied deliberations is seldom in a situation to produce instantly those exertions which the occasion may demand." In no better way may the ineffectiveness of relying upon the organized militia as first-line troops be indicated, than by pointing out that it is now within the power of the states to defeat the best plans of the War Department for training the militia in peace and utilizing them in war, by the simple expedient of summarily disbanding them. One of the states has refused to maintain an organized militia. There are instances on record where governors of states, against the wishes of the War Department, have disbanded their organized militia. There are instances on record where the governors of states in time of war have refused to permit participation of their state troops in the conduct of the war, on the ground that in their judgment they would be better employed elsewhere, and in furtherance of some other objective.

In the absence of direct legal authority over the militia, the War Department has succeeded in indirectly controlling in large measure its training and activities. This has been accomplished by making Congressional appropriations for the militia conditioned upon organizations meeting stated requirements of the War Department as to organization and training. The National Guard of the country, or Organized Militia, if you please, have been organized into twelve tactical divisions, and are considered at present a part of the first-line troops upon which the government, with the regular Army, would have to depend in time of war, while a large volunteer army was being organized and trained. The National Guard of the country number 127,000 officers and men. They vary in efficiency from excellent to bad. But it is hardly fair to criticize most of the organizations in the latter category, for the reason that it will be found that their inefficiency is largely the result of inadequate financial support. So inadequate is this support that while the government expends $1,100 per year for the maintenance of each regular soldier, it expends but $35 a year for the maintenance of each militia soldier. In some states this insignificant sum has been adequately made up by state appropriations, and in such states it has been possible for the National Guard to attain a high standard of efficiency. In some states the state appropriations are so inadequate that they do not equal the insignificant financial aid provided by the Federal government. In New York state, on the other hand, the National Guard receives nine times as much financial support from state sources as it receives from the Federal government.

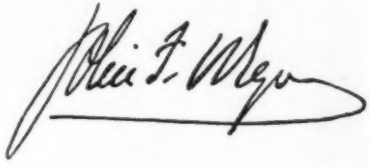
It will be found that in all the states there is approximately the same character of material available for the composition and training of organizations, provided the government will furnish the proper financial assistance. Where this financial assistance is lacking, it must be apparent that men of education recognize the futility of attempting to develop efficiency without the necessary facilities and other material things, and hence refuse to enter the National Guard service as officers.

Certain it is that no plan for military preparedness will be effective which is based on an attempt to get something for nothing. The sentiment of the National Guard personnel throughout the country is largely in favor of adequate Federal control. If the National Guard is reorganized on a basis to provide this

control, and Federal appropriations are made available to pay the officers and enlisted men for their services an amount which will at least equal their many incidental expenses, and to make available adequate facilities for training, it will be found that a very large number of educated young men throughout the country will render themselves available for service as officers, and that the ranks will be filled up under conditions which will render effective discipline practicable.

The National Guard is not a plan; it is a force in being, and it should be utilized, with the regular Army, as the nucleus for a large National Army, and this should be done under conditions which will make service of its officers and men acceptable.

If ultimately it is determined that universal military training is desirable or necessary, this National Army, so developed, would be the proper basis upon which to build such system of universal service.



Tasks of Democracy

"We are living at a time when men and women in a large part of the world are undergoing a discipline unrivalled in its severity and are exhibiting a heroism that has never been surpassed. Let it not be supposed that those who survive will lack the strength which such sacrifice and such discipline must give. Let us not content ourselves with the comfortable thought of hardships we have escaped, but rather reflect upon the vigor, self-discipline, and patriotic ardor which alone can make us worthy of opportunity or able to use it. The sentiment of the bar is a fair index of public virtue. If its standards are corrupted, the vital forces of society cannot fail to be enfeebled. With a sound, courageous, and independent bar, a foe of demagogy but a friend to rational improvement, vindicating its expert leadership by intelligent conception of the interests of the community and by its zeal for the better administration of justice which is its especial care, democracy will not essay its tasks in vain."
—Hon. Charles E. Hughes in Address before New York State Bar Association.

Legal Responsibility of Obedient Soldier or Militiaman

BY WILL W. ACKERLY

of the Virginia Bar

WHILE the relation of state and citizen involves many serious and important obligations, none of these, it seems, in the present condition of world civilization, is more serious and of greater importance than that of the citizen to bear arms in defense of the state. Sometime in the dim, distant future a higher civilization may bring the disarmament of nations and worldwide peace; but just now such a condition seems little more than a Utopian dream.

Under the existing military system of the United States every male citizen of the several states possessing the proper age and physical qualifications is potentially a member of the disorganized militia of the land, and at any time may be called upon to fulfil his obligation to the state by the performance of active service in the organized militia. For this reason alone, therefore, the question of the civil and criminal responsibility of soldiers and militiamen for acts done in the course of their military duties in obedience to the orders of their lawfully constituted superior officers is one worthy of the thoughtful consideration of every citizen of military age and physique. For the additional reason, however, of its relationship to the establishment of an efficient public service and the promotion of a sound administration of right and justice, the question is also one deserving of the like consideration of all citizens, and especially those to whom the peculiar duties of the formulation, promulgation, and judicial administration of the law have been committed.

"Discipline is the soul and backbone of armies." [1] It is the habit of obedience, and on it rests the whole art of war. Obedience, therefore, is the first and last duty of the soldier. It is the very foundation upon which all military efficiency is built. Without it an army becomes a mob, while with it a mob ceases to be such, and becomes possessed of much of the power of an organized force. It is a quality that is demanded of every person in the military service. Each enlisted man, by his enlistment oath, and each officer, in accepting his commission, takes upon himself the same solemn obligation.[2]

The Articles of War,[3] which govern the National Guard and Volunteers as well as the Regular Army of the United States, provide that "any officer or soldier who disobeys any lawful command of his superior officer shall suffer death, or such other punishment as a court-martial may direct." In accord with this, it is also provided by the very first paragraph of the Army Regulations that "all persons in the military service are required to obey strictly and to execute promptly the lawful orders of their superiors." But, from the very beginning, every soldier is taught the lesson of complete and unhesitating obedience. It is enough for him to know that the person giving the order, whether an officer, a noncommissioned officer, or a private acting as such, is his lawful superior.[4] He may dislike the commander and have no respect for him, but he must respect his position and authority, and so reflect

[1] Andrew's Basic Course for Cavalry, p. 15.

[2] Manual for Noncommissioned Officers and Privates of Infantry of the Organized Militia and Volunteers of the United States, p. 7.

[3] Article 21, § 2330, Comp. Stat. 1913.

[4-7] Manual for Noncommissioned Officers and Privates of Infantry of the Organized Militia and Volunteers of the United States, pp. 7, 8.

The Supreme Court of the United States

honor and credit upon himself and his profession "by yielding to all superiors that complete and unhesitating obedience which is the pleasure as well as the duty of every true soldier." [5]

Orders must be strictly executed. It is not for him to comply with only that part of an order which suits him, or which involves no danger or hardship. Nor is it proper or even permissible, when he is ordered to do a thing in a certain way, or to accomplish a task in a definitely prescribed manner, for him to obtain the same results by other methods.[6]

His obedience must be prompt and unquestioning. When he receives an order, be he officer or enlisted man, it is not for him to consider whether the order is a good one or not, whether it would have been better had such an order never been given, or whether the duty might be better performed by someone else, or at some other time, or in some other manner. His duty is, first, to understand just what the order requires, and, second, to proceed at once to carry it out to the best of his ability.[7] To him the maxim of despotism, that "to hear is to obey," is more nearly applicable than to any other class of society.[8] And rightly so, for, if every subordinate officer and soldier were at liberty to question the legality of the orders of the commander, and obey them or not, as they might consider them valid or invalid, the camp would be turned into a debating school, where "the precious moment for action would be wasted in wordy conflicts between the advocates of conflicting opinions." [9]

How important, then, that the question of the responsibility of soldiers and militiamen under the civil and criminal law for acts done in obedience to orders should not be so determined as to needlessly encourage disobedience and breach of discipline! Yet, the great majority of the cases, interpreting the term "lawful orders of a superior" to mean "orders not contrary to the civil or criminal laws of the state," ignore the great distinction between this and the interpretation, "orders of a lawful superior," made by military authorities for the government of the soldier's conduct, and sustain a rule which, if rigidly adhered to by military persons, can have no other result. For, it is the doctrine of these cases that, while persons engaged in the military service of the state or nation are not liable in a civil suit for damages, or in a criminal prosecution for acts done in the course of their military duties in obedience to orders of a superior officer which are not contrary to the civil or criminal laws, if, however, the orders of such officer are contrary to such laws, they afford no justification for the wrongful act.[10] If military persons adhered to this rule as

in Re Grimley, 137 U. S. 147, 34 L. ed. 636, 11 Sup. Ct. Rep. 54, passing upon another question than the one under consideration here, recognized the situation of the soldier thus: "An army is not a deliberative body. It is an executive arm. Its law is that of obedience. No question can be left open as to the right of command in the officer, or the duty of obedience in the soldier. Vigor and efficiency on the part of the officer and confidence among the soldiers in one another are impaired if any question be left open as to their attitude to each other."

Similarly in Wilkes v. Dinsman, 7 How. 89, 12 L. ed. 618, the court, quoting from Martin v. Mott, 12 Wheat. 30, 6 L. ed. 540, in effect said: Prompt and unhesitating obedience to orders is indispensable to the complete attainment of the object of the military. While subordinate officers or soldiers are pausing to consider whether they ought to obey, or are scrupulously weighing the evidence of the fact upon which the commander-in-chief exercises the right to demand their services, the hostile enterprise may be accomplished without the means of resistance.

[8] Trammell v. Bassett, 24 Ark. 499.

[9] McCall v. McDowell, 1 Abb. (U. S.) 212, Fed. Cas. No. 8,673.

[10] Note in L.R.A.1915A, 1141, where an exhaustive treatment of all the cases on the broad question of the civil and criminal responsibility of soldiers and militiamen will be found.

In Mitchell v. Harmony, 13 How. 115, 14 L. ed. 75, a leading case on this question, the court said: "If the power exercised by Colonel Doniphan had been within the limits of a discretion confided to him by law, his order would have justified the defendant, even if the commander had abused his power, or acted from improper motives. But we have already said that the law did not confide to him a discretionary power over private property. Urgent necessity would alone give him the right; and the verdict finds that this necessity did not exist. Consequently the order given was an order to do an illegal act; to commit a trespass upon the property of another; and can afford no justification to the person by whom it was executed. The case of Captain Gambier (Mostyn v. Fabrigas, Cowp. pt. 1, p. 180) is

closely as the courts have, the sentiment now pervading the nation for a more efficient army of defense would be stronger than it is, for by no possibility could any efficient military force be maintained where its members first paused to consider and determine the legality of the orders of their lawfully constituted superiors.

At least two cases, in different jurisdictions, have gone to the extent of specifically limiting the orders which militiamen in active service to preserve the peace may obey by deciding that a member of the militia, under such circumstances, is not justified in obeying the order of his superior officer to do any act which would be in excess of the power which might be exercised by a peace officer of the state.[11]

Do the ends of justice demand that the subordinate should be made responsible for obedience to the unlawful orders of his superior? In any case where a suit for damages will lie, the injured party can have but one satisfaction, and that may and should be obtained from the really responsible party,—the officer who gave the illegal command; or else, under laws enacted to that effect, from the state which commissioned him and put him in the position to give the command. And likewise, where a criminal prosecution will lie, it would seem that the burden of responsibility could be removed from the shoulders of the obedient subordinate, and still leave society subject to no great impending danger. True, in civil life the rule is well settled otherwise that a person committing an

directly in point upon this question. And upon principle, independent of the weight of judicial decision, it can never be maintained that a military officer can justify himself for doing an unlawful act by producing the order of his superior. The order may palliate, but it cannot justify."

And in United States v. Carr, 1 Woods, 480, Fed. Cas. No. 14,732, the court said: "Nor will any order of a superior officer to an inferior in rank justify the wilful killing of a person under the peace and protection of the law. A soldier is bound to obey only the lawful orders of his superiors. If he receives an order to do an unlawful act, he is bound neither by his duty nor his oath to do it. So far from such an order being a justification, it makes the party giving the order an accomplice in the crime. For instance, an order from an officer to a soldier to shoot another for disrespectful words merely would, if obeyed, be murder, both in the officer and soldier."

In Clay v. United States, Dev. Ct. Cl. 25, the claim of a United States captain of cavalry for reimbursement from the government in the amount of a judgment in trespass against him for breaking and entering a house in search of deserters, under order of his superior officer, while stationed in a certain town, was denied because the order was unlawful and no justification of the wrong, since, if it was necessary to enter the house to search for deserters, the proper authority to do so should have been obtained from a civil magistrate.

And an inferior officer, directed by his superior to arrest and punish persons not connected with the Army, for retailing spirituous liquors, at their usual places of business, to soldiers in a territory not under martial law, is not protected from liability to the arrested party for damages on account of such arrest, because the order was illegal, the sale of liquors to soldiers in such case not being prohibited by law. Griffin v. Wilcox, 21 Ind. 370.

Army officers of the United States, occupying land without the consent of the owner, and without authority of law, stand under the same liability as would a private citizen. That such occupation was taken by them as military officers, under orders from their superiors, would not affect such liability, for such orders could not be lawfully given. Stanley v. Schwalby, 85 Tex. 348, 19 S. W. 264.

In Bates v. Clark, 95 U. S. 204, 24 L. ed. 471, the court said that whatever may be the rule in time of war and in the presence of actual hostilities, military officers can no more protect themselves in time of peace than civilians for wrongs committed under orders emanating from a source which is itself without authority in the premises; and accordingly held a military officer liable to an action as a trespasser for seizing liquors supposed to be in Indian country, when they were not.

And a soldier cannot shield himself from responsibility for an act by an unconstitutional order of the President of the United States, authorizing such act. Eifort v. Bevins, 1 Bush, 460.

The doing of an act not legitimately an act of war, by soldiers, cannot be justified by showing that they did it by command of their superior officers. Christian County Ct. v. Rankin, 2 Duv. 502, 87 Am. Dec. 505; Ferguson v. Loar, 5 Bush, 689; Dills v. Hatcher, 6 Bush, 606.

And an order of the superior officer not being authorized by the laws of war, it conferred no legal authority, so that the act of taking money by force out of a bank in Hopkinsville, Kentucky, in December, 1864, by a Confederate quartermaster, acting within the order of his commanding general, was illegal, and he was personally liable for all the consequences of his tortious and unjustifiable act. Terrill v. Rankin, 2 Bush, 453, 92 Am. Dec. 500.

[11] Franks v. Smith, 142 Ky. 232, L.R.A.

illegal act cannot justify his conduct upon the ground of a command of another. But the circumstances of the two cases are entirely different. In the latter case, the party giving the command and the one obeying it are equal in the eyes of the law. The latter does not act under compulsion. He is a free agent, and at liberty to exercise his judgment in the premises.[12]

Ordinarily a soldier is in no position to determine the validity of the orders which he receives, yet, under this rule, he must act at his peril. If he decides that the orders are valid, and obeys, he may be held responsible in a criminal prosecution or a civil suit for damages. On the other hand, if he decides that the orders are invalid, and disobeys, he may be tried by court-martial and disgraced. Realizing the harshness of this situation and the demands of the public service, a few cases have justified soldiers acting in obedience to orders which were not clearly illegal, or such as a man of ordinary sense and understanding would naturally deem illegal.[13] Obviously this rule, leaving a wide middle ground between an order plainly legal and one palpably illegal—particularly in time of war —where the soldier will not be charged with the invalidity of the orders, is more just than the one already considered. There are objections, however, even to this one. In the beginning, if it is admitted that the soldier can disobey an order which a man of ordinary sense and understanding would be justified in deeming illegal, it must also be admitted that he has the right to stop and question every order which he receives before deciding that it is one for him to obey. This is seriously detrimental to the public service. Again, even if, after due consideration, he decides that the order is valid, he may still find himself liable in a criminal prosecution or a civil suit for damages, for men of ordinary sense and understanding frequently differ in their opinions on the same subject, and ordinarily courts and juries are not soldiers, and fail utterly to look at the matter from the soldier's view point.

The opinion has been expressed by some courts as a reason for their attitude on this question that a man who becomes a soldier is none the less a citizen, and that his duty as a soldier will not justify an unlawful act. A man, however, who becomes a judge or a legislator is likewise none the less a citizen, yet he enjoys immunity for certain wrongs done in the course of his official duties which are only lawful because the public service demands that there should be no legal responsibility in such instances.

Are not the demands of the public service great enough to entitle the soldier and militiaman to absolute immunity from civil and criminal responsibility for acts done in obedience to the orders of a superior officer? One court, at least, appears to have thought so.[14] To so protect the soldier would not leave the

1915A, 1141, 134 S. W. 484, Ann. Cas. 1912D, 319; Fluke v. Canton, 31 Okla. 718, 123 Pac. 1049. Commenting upon the Franks Case, the author of an article in 72 Cent. L. J. 317, says: "It seems to us that the militiaman takes an extraordinary risk. On the one hand, obedience may subject him to criminal or civil liability; on the other hand, disobedience may incur military punishment. The Kentucky court seems not to have proposed a happy solution of things. A peace officer acts on his personal responsibility, undictated to by another. A militiaman must act under orders, and it seems a farce as regards military efficiency, if he may question his orders. The governor has the right to declare when need arises for the militia to be called out. The militia may thwart the purpose of the call by refusing to obey orders issued according to military practice."

It is interesting, too, to note that in this case the court makes the somewhat startling announcement that it is little concerned with the question whether or not the military law can punish a militiaman for disobedience of an order, which, if executed, will involve him in civil or criminal liability.

[12] See McCall v. McDowell, 1 Abb. (N.S.) 212, Fed. Cas. No. 8,673.

[13] McCall v. McDowell, supra; Re Fair, 100 Fed. 149; Riggs v. State, 3 Coldw. 85, 91 Am. Dec. 272.

[14] Trammell v. Bassett, 24 Ark. 499; Taylor v. Jenkins, 24 Ark. 337, 88 Am. Dec. 773.

This also is apparently the view in continental Europe. 18 Albany L. J. 107.

And in Louisiana, § 21 of the Militia Law, act No. 181, p. 371, of 1904, provides that "members of the militia ordered into active service of the state by any proper authority shall not be liable civilly or criminally for any act or acts done by them while on duty, but shall be liable only to such court-martial or inquiry prescribed by military law." Sec. 14 of the New York Military Law, chap. 36 of

injured party without remedy, for, as has already been said, he may still have a right of action against the officer who gave the command, and, if that remedy is considered inadequate, provision may be made for a claim against the state which assumed the selection of the offending superior. To say that the military would usurp powers not intended for it if the soldier were given this absolute immunity is both unfair and unreasonable. Does the judiciary, because of its immunity for certain acts which may be injurious to the rights of others, wilfully proceed to commit those acts?

Thus far, however, the courts appear to have been overzealous in their efforts to keep the military in strict subordination to the civil authority. Until this pronounced zeal for the supremacy of the civil authority over a most important executive arm of the government abates, and the harshness and inconsistency of the law on this question as it now stands, are properly appreciated, the soldier or militiaman in those states where the law has not been changed by legislative enactment must continue to act at his peril in obeying the orders of his erring superior, and trust to a possible indemnity from a benevolent legislature, or a pardon from a sympathetic pardoning power.

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the Consolidated Laws, 1909, p. 2339, contains a similar provision.

See State v. Josephson, 120 La. 433, 45 So. 381, where the court decided that it is only in the sense of having been ordered into active service by the governor that, under this act, militiamen are not amenable to the civil courts, but only to a military tribunal, and that they are not withdrawn from the jurisdiction of the civil courts when in active service in the sense simply of being members of the militia in good standing.

The Philosophy of Preparedness

The necessity of a nation having force commensurate with its responsibility is demonstrated by every correct process of reasoning founded upon fact. This is so whether the subject is considered in the light of the philosophy of government or of history. The use of force is the inherent essence of government. The very term itself is explicit—government, the right or power to compel obedience to law. Where there is no force to compel such obedience —that is, to govern—there is anarchy. Individuals give up the right of unregulated action when they form themselves into or become subject to a government. The progress and advancement of that which is summed up in the word "civilization" have been made possible solely because of government. Unless the individual is secure in his person and his property he has neither time nor inclination to devote himself to the cultivation of the mental, moral, or spiritual side of his nature. That security is assured to him by government, and government can only meet its responsibility of assurance by the possession of sufficient force to secure and preserve it. In our own earlier days the continued progress of the arts of peace was constantly interrupted by the necessity of banding together to prevent destruction by aggression from without. Later, and even after many of our largest civil communities were established, the individual citizen had to be prepared to protect himself, his family and his property, against the depredations of criminals, until the community organized and prepared a police force sufficient to assure the citizen of protection.

The identical necessity exists as to the nation. Unless the citizens thereof are assured that they can cultivate the arts of peace behind a barrier of force which will protect them from aggression and secure them in their rights, they are not free to cultivate such arts. Alike in the case of the individual, the internal municipality, and the nation, there must be a realization of the responsibility and a willingness and preparation to measure up to and meet it.—Hon. L. M. Garrison, Secretary of War.

The Diplomatic Protection of Citizens Abroad

BY EDWIN M. BORCHARD

Law Librarian of Congress

Author of "The Diplomatic Protection of Citizens Abroad;" "State Indemnity for Errors of Criminal Justice;" "Guide to the Law and Legal Literature of Germany and Spain."

PROBABLY few questions of international law so deeply concern the individual as the matter of diplomatic protection. The constant increase in the number of citizens going abroad for business or pleasure, the constant increase in the amount of capital, American and European, which has been seeking investment in foreign countries, and the coincident growth of international commerce and intercourse, have resulted in the creation of vast commercial and other interests abroad. The diplomatic and consular service have been employed to an increasing extent in the protection of the business interests of citizens abroad, and the adjustment of their difficulties in the countries in which they reside.

For the citizen, therefore, diplomatic protection is probably the most personal and practical phase of international law, and the thousands of cases which are annually presented to the Foreign Offices of various governments attest the growing importance of the subject. The injuries sustained by American citizens in Mexico, and by thousands of neutrals during the present European war, will undoubtedly give to the subject an increased significance.

Up to the present time, diplomatic protection has not been considered as coming within the domain of legal remedies. This is believed to be a misconception. The settlement of innumerable claims by diplomatic negotiation, and the many decisions of international tribunals of arbitration, have established certain fixed principles, which govern the exercise of diplomatic protection. It is, indeed, an extraordinary legal remedy open to the alien in certain cases, where, after the exhaustion of local remedies, a denial of justice, as that term is understood in international law, is alleged. It is subject in its grant to the discretion of the Executive. Considering it, then, as an extraordinary legal remedy, it has, in the present day of international commerce and intercourse, become of the utmost importance to every lawyer dealing with questions of international law, to every diplomatic and consular representative of a nation, and to every citizen residing or engaged in business abroad.

The theory of the state's protection rests upon the principle formulated by Vattel: "Whoever uses a citizen ill indirectly offends the state, which is bound to protect this citizen; and the sovereign of the latter should avenge his wrongs, punish the aggressor, and, if possible, oblige him to make full reparation; since otherwise the citizen would not obtain the great end of the civil association, which is, safety." The indirect injury which the state sustains by an injury to one of its citizens warrants bringing into operation the state's protective machinery.

This principle, however, requires modification and amplification, for it does not fully explain the action of the state. In the first place, reparation is demanded only for such injuries as the state in its discretion deems a justification for diplomatic protection. Factors which enter into consideration in determining the state's interposition are, the seriousness of the offense, the indignity to the na-

tion, and the political expediency of regarding the private injury as a public wrong to be repaired by national action —in short, the interests of the people as a whole, as against those of the citizen, receive first consideration before state action is initiated.

In the second place, not every injury warrants immediate interposition by the state. It is only when the citizen has suffered flagrant injustice or maltreatment by or at the direction of an authority of the state of residence that his national government is warranted in taking immediate measures of repression. If the injury is received at the hands of individuals or certain minor officials, who cannot be regarded as representing the government, the individual must in first instance be remitted to his local judicial remedies, and only in the event of a denial of justice, as that term is understood in international law, may the state properly interpose in his behalf.

In the third place, although the state, in prosecuting the offense committed against its citizen, is presumed to avenge and seek compensation for the injury to its national welfare and dignity, an injury quite independent of that sustained by its citizen, it nevertheless happens, in practice, that the largest proportion of claims are dropped at the moment the citizen changes his nationality or assigns his claim to the subject of another state. This result has been established by numerous arbitral decisions, and by the practice of Foreign Offices. If it were merely the injury to the welfare or dignity of the nation for which compensation is sought, the subsequent act of the citizen would hardly lessen the injury, or weaken the right or power of the state to exact reparation. As a matter of fact, Vattel's theory, of the indirect injury to the state in the person of its citizen, merely explains the initial action of the state in bringing its protective machinery into operation. The citizen may well relieve the state of further interest in his case by changing the nationality of the claim or of the claimant. While the injury to the state and the injury to the citizen are independent wrongs, the action of the state in demanding compensation is in large degree dependent upon the subsequent conduct of the citizen in supporting the title and right of his government to interpose in his behalf. The circumstance must not, however, be overlooked, that injuries inflicted upon certain officials, representative of the government, or upon public vessels, or other public property, give rise to national offenses only, to the exclusion of private claims, and that certain classes of injuries to individuals, when deemed to involve affronts to the nation, survive any assignment or settlement by the private claimant.

The action of the state in exercising the right of diplomatic protection, being based upon its independent claim against other states to have its nationals treated in accordance with the rules of international law, has been founded by various writers upon its right of self-preservation, the right of equality, and the right of intercourse. While it may be true that the habitual unredressed violation of the rights of its citizens abroad would weaken the state both materially and in prestige, and to that extent impair its integrity and its power among nations, the injuries to the subjects of a given state are never so habitual, so numerous, or so widespread, as actually to endanger the safety of the state. It seems preferable to consider the state's action as a sanction for the right of international intercourse between states and individuals, according to the standard of conduct and treatment recognized as proper and lawful by international law and practice.

The right of protection is a limitation upon the right of territorial jurisdiction. The former cannot oust the latter,—except by treaty,—but has the power to require that as to aliens it shall be exercised in a regular, legal, just, and impartial manner. The right of protection, which every state possesses, is correlative to its obligation to accord foreigners a measure of treatment satisfying the requirements of international law and relevant treaties, and to its responsibility for failure to accomplish this duty. Diplomatic protection is in its nature an international proceeding, constituting "an appeal by nation to nation for the performance of the obligations of the one to the other, growing out of their mutual

rights and duties." This right of the state is, as an international phenomenon, a manifestation of its power, over the individuals under its allegiance, to prevent or repress on the part of other states any invasion of their rights or any pretension not finding its basis in international law. As no municipal statutes specify the circumstances and limits within which this right of protection shall be exercised, each government determines for itself the justification, expediency, and manner of making the international appeal. The merits of its right to exercise diplomatic protection may, however, be referred to an independent, if not altogether certain, standard—the standard of civilized conduct toward aliens recognized as proper by international law.

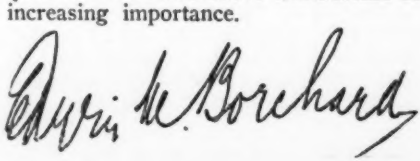
A thorough discussion of the subject itself requires a detailed study of many subsidiary topics. The first question that presents itself in an application for diplomatic protection is the right and title of the applicant to receive protection. The initial inquiry, therefore, is directed to the question of citizenship. The acts of June 29, 1906, and of March 2, 1907, have made so many changes in the American law of citizenship, that works written prior to 1907 on this subject have no longer much practical value. Under the head of citizenship, it is necessary to consider rulings of the courts and of the Department of State in interpretation of the law, the proof of citizenship and its evidences, e. g., the passport, naturalization, in its municipal and international effects, the effect of domicil and of a declaration of intention to become a citizen, the nationality of vessels and their title to protection, dual nationality, the citizenship of married women, widows, children, partners, and corporations, the rights of successors in interest and beneficial owners, such as heirs, executors, and administrators, assignees, creditors, mortgagees and insurers, and throughout, the relation between citizenship and protection.

Having determined the citizenship of the applicant for protection, it is necessary next to inquire as to whether his right to protection has in any way been forfeited. This involves a study of expatriation, of express or implied renunciation of citizenship or protection, of those acts or specific conduct of the claimant which warrant denial or withdrawal of protection, of the necessity for exhausting local judicial remedies, of compliance with the conditions prescribed by the citizen's own government for the extension of protection to its citizen, and, in general, of the various classes of facts, acts, and considerations which operate as conditions, qualifications, and limitations upon the right to diplomatic protection and the prosecution and recovery of international claims.

Having determined that the claimant is properly entitled to protection, the merits of the claim become the next subject of inquiry; and this involves a complete study of the rights of foreigners in municipal law and in international law, the right of the individual to sue the government, or the officer who in the government's name has inflicted an injury upon the individual alien, the incidence of liability between state and officer, and, finally, the international legal responsibility of the offending government to the home government of the citizen. The last topic, one of the most important of all, involves an examination into the various classes of claims which may involve the liability of the government, and particularly a discussion of "denial of justice," the fundamental ground of nearly every international claim.

Having determined the rights of the claimant and the merits of the claim, the next question involves the exercise of diplomatic protection, namely, the relation between the public and the private injury, the government's control over claims, the extent of protection, including the measure of damages, the means of protection, and the distribution of awards and indemnities after the claim has been successfully prosecuted to payment.

With the increased entrance of American business into foreign markets the questions indicated above will become of increasing importance.



Social Legislation and the Police Power

BY LAWRENCE K. FRANK

THE progress of social legislation has been attended by a difficulty which, in point of obstinacy, has been more formidable than any class interests. That is the legal difficulty. Our courts have been confronted again and again by legislation designed to promote the good of society, but which they were at a loss to sustain under the powers of our several state Constitutions, as they interpreted those powers. Of late such legislation contains almost specific reference to the police power of the state as its basis. But here again the courts have had difficulty in ascertaining the scope of the police power. Almost every court has refused to essay a definition of that power, and many frankly confess to a fear of so doing, lest the definition prove too broad or too narrow.

This same dismay in the face of proposed social legislation has been felt by our legislators. The increasing participation of philanthropic, economic, and research organizations in the production of legislation, designed to improve social and industrial conditions, has made each session a trial of soul to the conscientious representative. How far should he go in supporting this legislation, and will it be constitutional when passed? The sponsors of these laws have based their appeal on two grounds,—to some humanitarianism has been paramount, while with others the scientific element has weighed more strongly, but the purpose of both has been the promotion of the public weal.

To most courts humanitarianism alone is no basis for legislation, and to many scientific research appears irrelevant. The improvement of society, being debatable, may or may not be sufficient justification for a law, so that the support a law brings is, usually of no moment. So, also, with many legislators. They are unmoved by an appeal for the betterment of society and unconvinced by the results of research. Humanitarianism may be a motive to legislation and scientific research a warning of evils to come, but neither is a legal justification for legislation. The police power, undefined and unlimited, alone can justify social legislation. What, then, can be said of the police power which will outline its scope and purpose?

In the case of Health Dept. v. Trinity Church (145 N. Y. 32, 45 Am. St. Rep. 579, 39 N. E. 833, 27 L.R.A. 710), Peckham, J., said: "It (the police power) must be exercised subject to the provisions of both the Federal and state Constitutions; and the law passed in the exercise of such power must tend, in a degree that is perceptible and clear, toward the preservation of the lives, the health, the morals, and the welfare of the community, as those words have been used and construed in many cases heretofore decided . . . It must not be exercised ostensibly in favor of the promotion of some such object while really it is an evasion thereof and for a distinct and totally different purpose, and the courts will not be prevented from looking at the true character of the act, as developed by its provisions, by any statement in the act itself or in its title showing that it was ostensibly passed for some object within the police power. . . . Laws and regulations of a police nature, though they may disturb the enjoyments of individual rights, are not unconstitutional, though no provision is made for compensation for such disturbance. They do not appropriate private property for public use, but simply regulate its use and enjoyment by the owner. If

he suffer injury, it is either *damnum absque injuria,* or, in the theory of the law, he is compensated for it by sharing in the general benefits which the regulations are intended and calculated to secure."

This discussion is affirmative in a general sense and negative in a particular way. It establishes, however, the right to regulation, subject to property rights, of any activity when such regulation will inure to the general or public good.

Thus it may be seen that the police power is regulative, if not prohibitory, in character. It does not, however, appear to be appropriatory except where the appropriation is incidental to destruction of property as a nuisance.

Leaving the theory of the police power, consider the manner of its application. One of the earliest forms of social legislation in this country is found in health laws, such as the quarantine regulations against disease. The health authorities have been vested with power by the the legislature to prescribe almost any and all activities of the citizens. This power at present may transcend all other civil power or rights solely to protect the community from danger. Another early exercise of the police power is in the laws regulating factories and conditions of labor. Not only have factory acts established certain sanitary standards for factories, but they have prescribed the maximum hours which children, women, and even men may toil. Lately, in New York state the question of fire prevention has been enacted into certain regulative statutes. And for some fourteen years the construction of tenement houses has been subject to rigid requirements. By these various forms of social legislation based upon the police power of the state, a man's home, place of work, manner of living, and care of his property, are brought within certain limitations of free action for the benefit of the community.

The existence of these limitations and the method of their enforcement are, when considered historically, indicative of a change in government. All of these regulations are enforced by a corps of inspectors whose duty it is to seek out violations of the laws. When such violations are found and the accused is adjudged guilty, a fine is laid upon the individual for the misdemeanor. In a word, the violator is guilty of a crime. What he may have done to incur such a penalty varies from running a machine without proper guards to a negative act such as refusing to clear his premises of rubbish. In another case an individual may have rented and maintained a room lacking a window, for which he is likewise held guilty, and is fined. The functions of government have surely changed when a man can be held guilty of a crime who merely has kept rubbish on his premises or has not guarded machinery. And no one can claim a precedent for the act that prohibits windowless rooms and adjudges the renting of the same a crime. Yet the courts have held valid such laws because they promoted the common good. In each case it was demonstrated to the court that such regulations were desirable and necessary to the well-being of society.

The theory of the common law regarding torts or wrongs done to an individual has been that for every demonstrable wrong there was a remedy by an action at law. It was necessary to establish the wrong and the relation to the tort feasor, and the action was clear. Violation of the right of privacy, in using a person's photograph for advertising, has been held a tort and actionable. Conspiracy resulting in injury to an individual, where only the injury was proved, has been sufficient ground for an action, so that apparently the law of torts is potentially able to right all wrongs that can be proved and which are measurable. Thus, when John Doe, having legitimate business to transact, passes across the iron grating in the sidewalk before a man's building and is precipitated into the cellar, he may sue the owner for the injury and the time lost in recovery. There the wrong is apparent and the feasor is clearly negligent. The relation of cause and effect appear in no uncertain light.

Now enter circumstances and situations wherein there is much to ponder. An owner of property rents several rooms, one or two of which have no windows. In the course of several years

the tenant or some member of his family develops pulmonary tuberculosis. Or again, a property owner permits rubbish to accumulate in his building whereby a fire is propagated and fed, so that despite the efforts of the fire department the building of his neighbor is destroyed or his employees are endangered. Or a youth enters a factory and after four or five years of work at a machine that has no device for removing the dust he is stricken with pulmonary tuberculosis. In each of these cases an injury has been done to an individual and research has demonstrated the cause of it. But the element of time has entered in to obscure the causal relation. The injured party will seek in vain for redress in a court of law. There is no remedy for his wrong. These injuries occur in large numbers and many suffer thereby. The state, through its accustomed procedure, can give no aid until the legislature prohibits the renting of windowless rooms, forbids the accumulation of rubbish, and compels the use of "blowers" with grinding machines.

These three instances are typical of many cases where wrong is done for which no remedy at law exists, and of conditions detrimental to the community which must be changed. The point to be made is that these wrongs are not always capable of individual demonstration, but are known to exist, though the law offers no redress or course of action against the author of the wrong. Legislation which is designed to eliminate the possibility of these wrongs and to benefit the public as a whole is called, and clearly is, an exercise of the police power of the state. Thus it may be said that the police power of the state is that power which permits the state to regulate those practices or acts which may result in injuries to individuals, but for which there lies no private right of action. The test of the validity of such exercise of that power is the demonstration of the injury generally.

By the application of such a test the court deciding the question must concern itself primarily with matter of fact, rather than of law.

This definition of the police power will permit the acceptance of every form of constructive social legislation excepting insurance and compensation laws, which are of a somewhat different character. Under such a definition class legislation is scarcely possible. By it scientific knowledge of industry, of housing, of practically all human activity, will be stimulated and be recognized as the proper ground work for drawing up legislation. Accepting such a definition, no court can refuse to admit the researches into the nature of fatigue poison as evidence in support of laws limiting the hours of employment. Briefs will be written in cases testing the constitutionality of social legislation by men of science and their investigators, rather than by lawyers alone.

To those who look askance upon any such departure in the law, it is well to recall to their minds the development of equity and the function it had to perform in English law. In a larger sense equity, before it crystalized, and social legislation are closely related. One intervened to soften the rigor of the existing law and sought to bring into harmony conscience and legal procedure; the other seeks to better society where conscience is absent and legal procedure is powerless. Both are instruments of progress disturbing the established order as all progress must, but making for the betterment of society and the conservation of human rights.

Lawrence K. Frank.

The Newer Conception of the State

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THE present is a time of change and readjustment. In all spheres of life the signs of a new time are apparent. But in the ranges of our political life the signs of change are most evident and the demand for readjustment is most insistent. Many things indicate that society is about to take a long step forward. And many observers declare that the State must reconceive its mission and assume some new functions. In view of all this the inquiry proposed in this brief article may have some pertinence and value.

"Where there is no vision the people perish." "That which gives life its keynote," says a suggestive writer, "is not what men think good, but what they think best." "Virtuous conduct that is ignorant of its end," Socrates used to say, "is purely accidental." The history of progress will show that mankind has risen in the scale as it has recognized ideals and has sought them. The fact is also that man's conduct is rational and moral as it is shot through and through with intelligence and purpose. If, then, one were asked what is the greatest need of mankind in this time of change and readjustment, he would say that it is a sense of direction in human progress, some great ideal that shall explain all lesser ideals, some great synthesis that shall give life meaning, that shall unify men's efforts, marshal them as one army to go forth and do battle with the enemies of society, and inspire them with one mind to arise and build a better social order.

The institution we call the State is a recognized force and factor in the life of all peoples. But what is the real value of this institution? What is its essential nature, and by what right does it exist? What are its necessary functions, and how can it be enlisted more directly in the work of human progress? These are fundamental questions in human thinking, and it would seem that by this time of day we should have clear and definite answers. But the moment we ask these questions our perplexity begins. For "the conception which prevails generally among the men of our time, of the State, its nature, and the part it has to play, is singularly confusing and confused." . . . "When it approaches this theme, which has so weighty a bearing on human destinies, their thought loses itself in mist and fog." (Beaulieu, The Modern State, p. I.) At the risk of being considered presumptious we offer a few items that must enter into that newer and truer conception of the State which is growing in our time. We shall indicate briefly some of the conceptions that have obtained with reference to the place and functions of the State; then against this background we may see the outlines at least of that newer and larger conception which is coming.

I. The nature of the State.

It has been maintained the State is a *jural society*. In the early stages of their associated life men feel the need of some authority which shall protect their rights and shall maintain justice. And so it comes about that men create some forms of political control which shall maintain their private interests and maintain peace. The State, in this conception, is a great policeman whose sole function it is to prevent disorder. The State is also a judicial authority whose business it is to adjust differences. Beyond these functions the State can claim no authority. It is needless to multiply names, but some great reputations are associated with this conception. Thus, Herbert Spencer de-

clares that the State is simply a committee of management, and it has no intrinsic authority; its authority is given by those appointing it; and it has just such bounds as they choose to impose ("The Man Versus The State," p. 411). Macauley, in his essay on Gladstone's "Church and State," maintains that the primary end of government is the protection of persons and property; he thinks "that government should be organized solely with a view to this end." This conception, it may be said, is true as far as it goes, but it does not go far enough; in fact it ignores those very things which have been most conspicuous in the life of all great States. It thinks of the State as a vast machine driven by the forces of public and private interest,—a sort of huge insurance society, the taxes being the premium (Lilly, "First Principles in Politics," p. 29).

It is maintained that the State is an *economic society*. This view, it may be said, has had few exponents in the past, in theory at least, but it is finding many defenders to-day in practice. In this view the State is an organization for the promotion of man's physical and commercial well-being, and when this is conserved the State has fulfilled its office. Man cannot live without property, and this property must be protected. Human well-being is promoted by trade, and trade must be extended. The State in this conception furnishes the conditions in which each man can best advance his material interests. It is evident that this is the conception of the State which holds the first place in the mind of the average statesman to-day. An examination of the measures that come before the modern Congress or Parliament or Reichstag will reveal the fact that an increasing proportion of these measures are concerned with the economic interests of the people. There are many who insist that the State has little to do with other matters, such as education and morality; such things must be delegated to private individuals and voluntary associations.

Included in these conceptions, and yet rising far beyond them, we find the conception of the State as a partnership of men in all good. Aristotle, than whom no clearer political thinker ever lived, maintained that civil society was not founded for the sake of preserving and increasing property. "Nor was civil society founded merely in order that its members might live, but that they might live well. . . . It is evident, then, that a State is not a mere community or place, nor established for the sake of mutual safety or traffic. A State is a society of people joining together with their families and their children to live well, for the sake of perfect and independent life" ("Politics," Bk. III. chap. ix.). The same thought runs through the masterly oration of Pericles, delivered over the Athenians who fell in the Peloponnesian war. All through this oration, which may well be the model of its kind, there runs the conception of the State, not as a mere dwelling place for men, nor as a provision for their material well-being alone, but as the sphere of highest activity. The great words of Burke emphasize the same truth, and are worthy of careful consideration. "The State ought not to be considered as nothing better than a partnership agreement in a trade of pepper and coffee, calico or tobacco, or some other such low concern, to be taken up for a little temporary interest and to be dissolved by the fancy of the parties. It is to be looked on with reverence, because it is not a partnership in things subservient only to the gross animal existence of a temporary and perishable nature. It is a partnership in all science; a partnership in all art; a partnership in every virtue; and in all perfection" ("Reflections on the Revolution in France").

II. The new social spirit.

"The kingdom of heaven cometh not with observation," says Jesus; but it comes. In the last few decades a change has come over the thoughts of men that is as real as it is wide reaching. Without observation, almost without anyone being aware of it, the whole social and political climate has changed. The man who thinks at all to-day cannot think in the terms of two generations ago; he may use some of the old terms, but they carry a different meaning. This is so in the realm of theology and science, and it is

even more true in the ranges of politics and sociology.

First of all we have grown into a new conception of man. In these latter times the race is coming to self-consciousness, and men are discovering that they are social beings. As a part of this consciousness the race is growing what may be called a sense of humanity, and is learning to think of humanity, not as a number of disconnected and independent individuals, but as the interrelated and interdependent members of a living organism. Our personal life is rooted in the life of humanity as the plant is rooted in the ground; it flourishes in that soil and derives its richest nourishment from it. One man, says a wise old proverb, is no man. Thought is wholly unable to conceive of any such thing as a wholly independent being. We begin life as sons, and continue it as brothers, fathers, neighbors, friends, citizens. We are here because others have been. Paradoxical as it may sound, society is older than the individual. Every man is a social creation; his language, his thought, his consciousness, the smile on his face, the style of his dress, all are social products. In the most real sense we have discovered that no man lives to himself, and no man dies to himself. We have discovered that the race is one, and that we are bound in the bondage of our fellows, and that we can become free only in and through their freedom. The whole nation, as Ruskin suggests, is bound together like a company of travelers over the Alps; as long as all keep their feet and move with the company all goes well; but if one loses his foothold he must be carried by the company to the danger of all. We are all in the same boat, and we must all sail the sea together, reach harbor together, or go down in the storm together.

As a part of this sense of humanity we are coming to realize that every life has its place and its meaning in the total life of humanity. The race is composed of all of us together; every life is in a sense a special creation; it is a syllable in a divine purpose; it has its place and its meaning in the sum total of society. What we call progress is the march of all of us together. It takes all of us together to spell out the full meaning of the world; and it takes all of us together to fulfil the whole task of humanity. It is evident that if only a few are up while the great mass of men are down, society is neither ideal nor human. It is evident also that if a few do all the bearing while the great mass are borne, progress must be slow and uncertain.

It is no less evident that a few can never do the work which can be done only by all of us together. Not only so, but a few can never break away from the mass and rise into perfection by themselves. In the last analysis the success and worth of a civilization must be measured not by the condition of the few, but by the condition of the many. A civilization that produces a few consummate specimens can never be pronounced a success. Humanity is a unit, and we must march together. A modern artist has given us a very striking illustration of the meaning of all this. We see two figures—Progress and Poverty—standing upon the globe; Progress is a strong youth, with hope in his eyes, facing the future, and Poverty is a poor emaciated creature, with averted face and stumbling steps; the two are bound together, and thus Poverty hinders Progress, and Progress halts because of Poverty.

A third factor is the democratic faith. In these latter times one of the most momentous truths is making its way in the world, and one of the most fateful movements is gaining direction and momentum. Whether for good or ill, we do not here consider, the democratic faith is becoming the social faith of man, and the democratic movement is sweeping all before it. At bottom, what is democracy? "The idea of democracy," says Westcott, "is not, if we look below the surface, so much a form of government as a confession of human brotherhood. It is the equal recognition of mutual obligations. It is the confession of common duties, common aims, common responsibilities" ("Incarnation and Common Life," p. 349). Democracy assumes the worth of the common man; it assumes that his life has a meaning and value; it believes that he is entitled to a voice in social affairs, and that his interests should be considered. For good

or ill, democracy is becoming the working faith of the world, and some of its meaning is getting into the thoughts of men, and some of its obligations are pressing upon the conscience.

The fourth is the growing determination to make the state the agency through which the people can co-operate in their search after justice and in their effort to promote human progress. We cannot discuss this in detail, but one or two things may be noted.

In the generations of the past men have interpreted the law of justice and have written out their conceptions in Magna Chartas, in Constitutions, and in statutes. These are great way-marks along the path of progress and record great achievements in human endeavor. In our time mankind is seeking to interpret anew some of the meaning of the great law of justice, and is trying to apply it in the ranges of our social life. It is too early in the day for anyone to forecast the results of this aspiration and struggle, but a new chapter in human achievement is being written. Thus, we are beginning to see that the moral imperative is as wide reaching as life, and the law of justice applies equally in the social and political world. There is a just and right manner of life for the person, and there is a just and right constitution for society; and the law of justice is as much the life of the one as of the other.

We are beginning to realize that the State is the one agency through which all the people can co-operate in this search after justice. In saying this we do not mean that justice is the only object of the State; but we insist that it is a primary object. No society can be even remotely moral and human that is not approximately just. And yet we find that men to-day who would secure justice must create a voluntary organization that is a semimilitary group. This is seen in the modern industrial world in full expression. Thus, we have labor unions, wherein men unite for mutual advantage to secure themselves against aggression of employers. These unions are no doubt serving a most useful purpose in the world, and are training men in what has been called industrial democracy. Such unions and co-operative enterprises are preparing the world to understand the meaning of co-operation, and are teaching them to appreciate the need of social democracy. But such unions and enterprises are themselves a confession that government does not yet either understand or fulfil its true functions. If government did its full duty by all its members and were fully conscious of its mission, such unions and combinations would be wholly unnecessary. The fact is such things are in themselves an impeachment of government and show plainly that it is not yet fully rational or consciously democratic. One may deplore the blunders of these labor unions, but none the less they are absolutely the only thing at present that stands between the workingman and the killing pace of modern industrialism. They are the only agency that is working with steady aim to change the often intolerable conditions as to hours and wages which impersonal employing corporations make inevitable. "If in any far future democracy becomes a fact with all its man-made inequalities removed,—all the present mockeries gone out,—the long struggle of trade unions will be written down among the heroisms of history" (J. G. Brooks, "The Outlook," Nov. 17, 1906).

This new social consciousness and the great truths of the worth of man and the democratic faith are profoundly affecting human thought, and are changing all our ideals and programs. They are producing changes not alone in the form of the State and the aims of government, but they are changing our conception of the State itself and its great mission in the world. Implied in the nature of the State, growing out of the things thus far considered, we begin to see in clear outline the newer conception of the State that is both inevitable and necessary. In a sense this conception is but the attempt to define and apply the principles of State action that are widely accepted to-day. In another sense, however, it is the effort to frame a new working conception which shall at once justify an extension of State action and point the way to further advance.

III. The larger conception of the State.

In this time many great questions are pressing for solution, and the signs indicate that they will be wrought out in and through the State. Current movements in human society show impending changes in our social and political institutions. The foundations of all human institutions are being examined with pick and shovel, and everything is challenged to show its warrant for continuance. Human society has begun to investigate itself, with the result that a chain of problems constitutes man's horizon. The interrogation mark is the sign manual of the age. The word "problem" is the most recurrent word in every language to-day.

As might be expected, men are taking different attitudes toward the problems presented, and this greatly complicates the issue. Some are trying to hush men's fear by declaring that the evils of society are greatly exaggerated; and they close their homily by saying that all things will come right in time. At any rate, some of these things are inevitable —and perhaps necessary—in an imperfect society. And, anyway, they say, nature's processes cannot be hurried. Others, going to the opposite extreme, are demanding the overthrow of all existing institutions and the creation of a new social order. The old must go before the new can appear. Still others, and probably the largest class, stand confused, realizing that something is wrong, and that something must be done, and yet without any sense of direction or program of action. With all these, of whatever class or party, there is the foreboding that vast changes are impending in our western civilization, of which no one is clairvoyant enough to see the end. And beyond all these differences, there is the conviction that a part of this something to be done must be done in and through the State, and that it is to the State that we must look for help. In a word, there is the conviction that there must be a wide extension of State activity into man's social and industrial life. And this means that the State is becoming one of the media of the new social consciousness that is growing, and that it must assume many new functions and exercise many new powers.

First, the State is the one all-inclusive agency through which all the people can co-operate in behalf of the common welfare. It is the one organ great enough and varied enough to express and correlate the varied powers and talents of mankind, the one medium through which all men can co-operate in their search after social perfection. The State is the only organ through which the people can act as a unit in their pursuit of righteousness, and it is the only medium through which they can act together in the organization of their common life in truth. The Earl of Shaftesbury, like many another man, had found in himself the desire to help his fellows in their struggle after better things. How could he make his desire most effective and himself most helpful? By personal work with individuals he might have inspired and saved a soul here and there, but by working for the enactment of better laws regulating factories and mines, by bringing the power of Parliament to bear upon abuses and wrongs, and by enlisting the whole life of the nation on behalf of the downmost man, he made the goodness and wisdom, the power and love of the whole nation the means of uplifting and helping the weaker and more backward. There must be some medium through which men can work in giving themselves for society. The State is the only organ great enough to express the varied powers of man, the only medium through which men can co-operate in the attainment of the social perfection.

Again, the State must seek to promote the whole well-being of man and the total progress of society. There are four principles—social axioms they ought to be called—that may be of service. The effort of society should always be greatest where the need is sorest. The State that is under obligation to punish and restrain the criminal is under equal obligation to remove the causes which make the criminal. The State that confesses its obligation to care for its dependent and defective members should confess the equal obligation to prevent the continuous creation of such dependent and defective classes. The method of pre-

vention is a great deal cheaper and easier than the method of reformation, and it is also more Christian and more hopeful. A few suggestions in application of these principles may be offered.

For one thing, the State must encourage all those investigators who are seeking to know the causes of disease and crime. We must know the causes of these distressful phenomena of society, the criminal, the tramp, the insane, the idiotic; we must seek to remove the causes of these things, and we must labor to secure a larger proportion of sane, healthy, well-endowed, morally disposed people in the community. The State must put its resources in pledge in behalf of its weakest and least promising members that they may be lifted up into strength and fitness. In this work the wise State will co-operate with all the other agencies of man-making, such as the family and the church, that human life may be touched and influenced on all sides. The unfit must not be allowed to remain unfit, but must be transformed. But more important than this, society must take adequate precautions against the needless multiplication of these dependent and defective members. The State must go behind results and must seek to change causes, and this work it cannot evade nor deny. That is, the State must now employ its resources and exert its authority in creating conditions that will prevent the making and multiplying of the weak and defective. This is a great undertaking, and it may require long generations for the most advanced society to approximate the goal. But it is something to know the direction in which progress lies, and to consider what brings man nearer to the true standard. The progress of man and the perfection of society are the supreme concern of the State.

In the fulfilment of this aim there are many things that the State can do. It will seek to remove all conditions that make for human weakness, and will exert its authority to provide those that make for human well-being. It will wage an unceasing warfare against all condition that make it easy for childhood to lose its bloom of innocence and hard for it to grow up pure and strong. It will put forth a steady effort to build a wall of protection around girlhood and boyhood, and to shield childhood from needless toil and hardship. It will exercise its sovereignty in removing the handicaps and hindrances that are upon men, and will show its wisdom in keeping the door of opportunity open before every soul within its jurisdiction. If the conditions are unsanitary, the State will organize a board of health, and will endeavor to make them sanitary. If there are unfit tenements that poison life and breed disease, the State will condemn them and will order the very ground to be disinfected. If the State finds that the children are growing up in evil surroundings and without fit parentage, it will assume the function of a guardian, and will either compel the natural parents to provide better conditions, or it will annul the bond of parenthood and provide new homes for its orphans. If it finds that children have no childhood and no playgrounds, it will tear down factories to provide playgrounds, and will consider this money well spent. If it finds that children are growing up in vicious ways, it will establish juvenile courts and probation officers, and will hold its resources in pledge for the redemption of the young. If it finds that any set of men are making merchandise of girlhood, it will hurl the thunderbolts of its wrath, and will end this diabolism. In fine, the State will exercise its authority in providing the necessary moral conditions of a good life.

Again, in every society, there are many persons who begin the struggle of life at a disadvantage from other causes. Through the faults or the misfortunes of their parents they begin life without any real foothold or fair opportunity. They come into the world to find all its resources claimed in perpetuity by others, and thus they begin life under conditions which utterly disbar them from any fair chance in life. They are early forced into the mine or the factory to work, and thus, growing up without an education, they are unable to rise out of their condition. Now, however it may have been in the past, the time is going by when the State that is gaining the modern spirit will be willing that any soul should grow

up handicapped and unprivileged in this way. And so it must put forth a continuous and collective effort to provide conditions for every soul which make possible a worthy human life.

Further, the State will seek in a more direct and positive way to promote social and moral progress. Thus, the State will seek to provide for every person the opportunity of an education, and thus to give him a fair access to the best things of life with a measurable development of his powers. One or two things may be noted here: Any real education means the development and unfolding of the native capacities of the soul; to prepare the person to make the most of himself and for himself and for society. Education is a vital process, and consists in the development of each life in its highest capacities. This, in whole or in part, is recognized by the best modern State, as the system of general education testifies. But this aim, none the less, needs to be newly conceived, that the whole system may be enlarged to meet the ever-enlarging conception of human life. "There can be no equality and no justice, not to speak of equity, so long as society is composed of members unequally endowed by nature, a few of whom only possess the social heritage of truth and ideas of all past ages, while the great mass are shut out from all the light that human achievement had shed upon the world. The equalization of opportunity means the equalization of education, and not until this is attained is there any virtue or hope in schemes for the equalization of the material resources of society" (Ward, Applied Sociology, p. 281).

Again, the total resources of the State —the material basis of every life—are to be held in trust for the benefit of all, and no one class must be allowed to obtain an undue and disproportionate share of the common heritage. No man and no class of men can be allowed to preempt in perpetuity the strategic points of advantage and thus to compel all their fellows to pay them tribute. The authority of the State, which represents the highest will of the people, must be kept free from class control, and must steadily exert itself in behalf of social control and human progress. It is intolerable to the democratic faith that the resources of society should be manipulated by the few to the disadvantage of the many. It is contrary to the modern conception of things that a few men shall pre-empt all the choice gifts of God, while the great majority must pay them tribute for the mere privilege of living, and be content. It is part and parcel of the democratic conception that the highest goods of life are for all men, and to labor that all men may be raised up into the possession and appreciation of these goods. And so it is part and parcel of this conception that the strength and wisdom of all shall be held in pledge for the uplift and blessing of all; that in the strength and blessing of all each may find his own life and portion. It must therefore be the aim of the State to make it impossible for any person within its borders to grow up in ignorance and poverty, to be unprivileged and disinherited, to be stunted and deformed and destitute of the things that make for its highest good. In short, it must be the constant effort of the State to "strive for a perpetual renewal of opportunities and redistribution of advantages, so that every child shall come from the cradle to a fresh world with fresh incentives, not to one overworn and used up for him by the errors of past generations" (Bascom, Sociology, p. 252). It must take a genuine interest in all, with a conscious and organized effort to bring the outcast into the family circle, to give them an outlook into the highest life, to bring the highest goods within the reach of the downmost soul, and to lift up this soul into the possession and appreciation of its rightful heritage.

Further, the State must concern itself directly and positively with the moral life of the people. All clear thought recognizes that the national character is the result and outcome of individual character; for the quality of the elements determines the quality of the mass. Now, since this is true, even to truism, it would seem that the State which has any concern for its own moral character and social stability must concern itself very intimately with the moral life of its citizens. At the same time it must be remembered that it can do little in a direct way to achieve these results; it can

decree moral statutes, but it cannot create the moral will; it can create certain social machinery, but it cannot manufacture moral character. There is no civil enactment and political machinery that can generate moral life and build a righteous society out of unrighteous men. In view of this there are many men who maintain that the State can do nothing whatever to promote human virtue and morality; the machinery of the State is too coarse, they assert, for such delicate work, and hence the State would better limit itself to its true and proper functions. Herbert Spencer was never more clearly in the right than when he said that there is no form of government that can bring golden conduct out of leaden instincts.

But a more careful consideration of all the factors will show that there are many things that the State can do and should do in behalf of the moral life of its people. No one claims that it is possible to make men good by law; but everyone with any discernment knows that it is easily possible for the State to deal with conditions that make it doubly difficult for men to be good at all. The State can make it possible for men to live and labor on the moral plane; the State can remove the artificial barriers which society erects and can equalize opportunity for all; the State can remove the stumbling blocks that are placed in the way of men, and abolish the agencies that are clearly demoralizing; the State can apply the moral law to the civil organization of society, and can seek to prepare every person for full citizenship.

Thus far the primary, defensive, negative, and police functions of the State have bulked very large in the thoughts of men, and it has done a great work in these directions. In the more progressive modern States other functions have been recognized also, and much attention has been given to educational matters and to economic questions. But it is becoming more evident every day that there are whole ranges of functions beyond these, and men are beginning to consider what may be called the social and moral functions of the State. Men are beginning to see that the functions of the State are not negative and defensive only, to restrain the evil-doer and to punish crime, but promotive and positive also, to direct social progress and to further human well-being. As time goes by these negative functions will more and more sink into the background, and these positive functions will more and more fill the foreground. Herbert Spencer maintains that the State must prepare for its own decease, and must hasten the day when it will be unnecessary. On the contrary, as humanity advances towards its goal and society becomes more complex, the State will become more and more necessary, and will fulfil other functions that are now unrecognized. "The State," says Bluntschli, "is not an arrangement for the purpose of taming the evil passions. It is not a necessary evil, but a necessary good. Only by the realization of the State can peoples and humanity, taken collectively, manifest their real inward unity and attain to free corporate existence. The State is the fulfilment of the common order, and the organization for the perfection of common life in all public matters" ("The Theory of the State," p. 302).

We realize fully the objection that may be brought against this conception of the State. Many persons will hark back to the conceptions and maxims of a former time. They never tire of quoting the maxim: That government is best which governs least. And in so doing they miss wholly the deeper meaning of the State. If the State were a purely hostile institution, and government were an arbitrary arrangement for taxing and driving men, this maxim might be pertinent. But since the State is the people organized in a political capacity in behalf of the welfare of all; and since democratic government is the voluntary organization of the people and the agency through which all can co-operate, the maxim has neither value nor meaning. Whatever the people need to do in behalf of human well-being they can do and they ought to do.

Samuel Z. Batten

Modern Democracy

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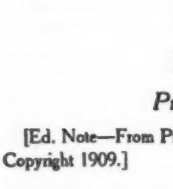

IF BY the term "people" is meant the collective mass of population domiciled within a state, the relation of such people to the state is obvious; they are its subjects, owing it obedience and allegiance. But they are not mere subjects; they are citizens also, for they have rights as well as obligations. After all, the only justification for the existence of a sovereign state must be found in its helpfulness and utility to its people. It owes to its citizens protection and aid in their struggle for betterment in life. Every citizen may demand that much from his state, and should rightly feel aggrieved if it fails to do its part. Yet the failure of the state to do its part has been the problem of the ages, and will probably remain so for many years to come. States do not satisfy the demands of their subjects in these respects, and, indeed, governments have seldom admitted that they were in duty bound so to do. The reason for this difference of opinion is not far to seek. Governments have regularly been aristocratic in the sense that the power of the state has rested in comparatively few hands. The members of this ruling class always assume that they have a sort of inherent if not divine right to rule, either because of the quality of their birth, or their wealth, or their intelligence. As rulers, they also assume that they are entitled to the best and largest share of the comforts of life, and that this share should first be secured before much thought be given to the well-being of the other members of the community. This attitude of mind is observable in all parts of the world and in all kinds of civilization. The wise and the strong naturally win the rewards of life, and it is assumed that the weak and the lowly should be content with bare subsistence.

The Ideal of Democracy.

On the other hand, the democratic ideal of citizenship has always had advocates. Whether "all men are created equal," or not, seems not so important as the question whether all men can be made equal, and, if so, whether they should not be given the opportunity to become so. Religion has endeavored to answer by assuring men of their equality in heaven or in God's sight, but men rather tend to prefer their equality on earth, possibly so as to be the better prepared for it in the other world. The state has so regularly favored inequality that some theorists[1] hold that equality will become possible only when the state is abolished. Believers in the utility of the state, who also advocate equality, argue that it can best be obtained through the proper utilization of governmental agencies. Whether governments will remain aristocratic, or ultimately become democratic, is, however, a question for future settlement. For a proper understanding of the tendency in development and the conditions that affect this tendency, however, a short sketch of the development of the democratic idea may be of service.

Tribal Democracy.

In primitive hordes and in the early patriarchal period, so far as their systems can be understood to-day, there prevailed in their political organizations a rude sort of democracy, based on the right of every adult male to participate in important decisions. Numerous illustrations of this exist today among savage tribes and in

[1] Anarchists and individualists.

village communal life as observed in Russia, India, and China. Women generally had civil rights in life, property, and family, and at times even had political rights when heads of families.[2] There was, however, a growing tendency for a woman to merge her legal personality into that of brother, father, or husband. Likewise, the development of a body of elders, composed of heads of families and powerful chieftains, tended to develop a class of persons having peculiar privileges and unusually large governmental powers. Through war came slavery, and a consequent servile class without rights, mere human beasts of the field. The multiplication of wealth in the form of flocks, herds, slaves, and landed interests accentuated and fixed social distinctions. Thus developed a system in which privileged classes, noble, learned, and wealthy men, exercised all political power, forming the electorate of their respective states. Below these were citizens, freemen, having no political rights, but with fairly well-defined civil rights of life, property, and family. These, however, were not carefully safeguarded against the tyranny or despotism of the ruling class. At the bottom of the scale were freedmen and resident aliens having a few civil rights, and a vast mass of slaves with practically no rights whatsoever.

Commercial Democracy.

The next stage of development came with the rise of commerce and industries. Through these developed from the lower classes wealthy, brainy men, too important to be ignored in the governmental system, who slowly acquired larger civil rights and some share in political power. If this form of wealth and influence increased so as to overbalance in importance landed wealth, it became the really efficient factor in the state, sharing powers equally with the older privileged classes, and developing thereby a sort of democracy, a democracy, however, in which the mass of the population—slaves, freedmen, and resident aliens—had no voice.[3]

In those days popular democracy in the modern sense would have been impossible. Citizenship regularly implied racial kinship; there was no system of naturalization except through the awkward method of adoption. Furthermore, slavery was looked on as a natural and proper condition for inferior and conquered races, and no theorist was rash enough to suggest that such persons should be freed and have governmental powers placed in their hands. Consequently, when the states of the classical period placed the suffrage in the hands of those who were citizens by right of birth, even though these numbered a minority of the population, they believed that they had the most liberal possible form of government, and in their theories set up their systems as the ideal of political development.

Popular Democracy.

Many causes contributed to the development of a larger idea of democracy. The Stoic and the Christian teaching of human rights, individuality, and brotherhood, and the extension of Roman citizenship throughout the civilized world, tended to dignify the individual and to discountenance slavery, especially as this institution was losing its economic importance through the rise of a system of vassalage. The economic development of Western Mediaeval Europe along lines of commerce and manufactures emphasized the need of a more energetic laborer than the slave or the serf, as a necessary factor in this development; and the increase of general intelligence through the printing press and commercial intercommunication helped to bring about a condition in which the privileged classes became relatively less useful to the state, and began to lose their monopoly of political, social, and intellectual privileges. When slavery and its modified form, serfdom, had disappeared from the larger part of Europe, and when militarism and dogmatic authority had yielded place to commercialism and intellectual flexibility, modern democracy became possible, and slowly began to push its way into the governmental systems of Europe.

[2] In the Russian *mir*, for instance.

[3] The reforms of Solon in Athens and the rise of the *Equites* in Rome are illustrations.

It is well to note that the democratic movement hitherto outlined is fundamentally not along humanitarian lines. It is simply the desire of the more capable part of the masses, who were called into a life of larger activity through economic need of intelligent labor, to secure for themselves a share in governmental power. Their interests demanded it, and they were willing to fight for it if necessary. But every advance they made afforded a larger place for those immediately below them. As long as there was an increasing demand for more intelligent labor, the supply was forthcoming; and as it came, it sought after political power. This power was, of course, the means to an end. Men desired to be secured in their rights and possessions, and knew that these would be safer as they gained a larger voice in government.

The Equality of Man.

The rapid development of machinery in the eighteenth and nineteenth centuries stimulated a demand for labor of any sort, and all men became important in industrial countries. The free farming lands of the American colonies also called for workers, and gave men opportunity to show enterprise and intelligence in the cultivation of the soil. Throughout this period, therefore, developed a strong emphasis on man as man; all alike, it was argued, should have opportunities to attain wealth and power. Stoic philosophy is the form of the theory of natural rights, and Christianity with its ancient emphasis on equality and fraternity again came to the front in support of this new condition. The result was a new sort of democracy. Heretofore political power had developed *pari passu* with economic capacity, but then began a tendency to give political power irrespective of economic capacity. If men were created equal, as the theory was, they ought to have political equality at least, on the assumption that, by the aid of the ballot, every man could win his proper place in the social system. These two theories of democracy are still in conflict. The one argues that the possession of political power should be based on an intelligent economic capacity; the other argues that every adult, even every woman, should have the ballot, in order to win rights and build up a capable personality. From the first come laws demanding intelligence tested by an educational qualification, and economic capacity tested by the possession of taxable property. From the other come demands that the ballot be placed in the hands of every person, including the enfranchised slave, the illiterate, the propertyless, and even subjects in colonial possessions.

Forms of Democracy.

In this development of democracy the working of two principles is evident: (1) An economic condition that demands in its workers capacity and intelligence will tend to bestow political rights on such men; (2) broad, ethical, idealistic principles, like that of human brotherhood, may influence a community in such a way that a government may create by law a condition of political equality and then purposively strive to raise the social and economic standards of its people, that they may exercise with efficiency the political powers placed in their hands. We may therefore distinguish three historical forms of democracy: (1) Tribal or communal democracy, common among all savage and barbarian peoples, and prevalent in the earlier forms of village life. (2) Conservative democracy, based on economic capacity and intelligence, and found generally among commercial communities. (3) Radical democracy, dominated by ideals of human equality, seeking to bestow political privileges irrespective of race, sex, or social conditions.

The materialistic democracy of the second class easily develops ideals of the third class through its emphasis on broad knowledge and intellectual capacity. Every commercial era is regularly accompanied by utopian dreams of a still broader civilization, when every man will count as one, and all men alike, irrespective of birth, will have opportunity to develop the best that is within them, and to attain any station to which their capacity entitles them to aspire. Along such lines dreamed Plato in commercial Athens, the Christians and Stoics under Roman sway, Sir Thomas More in the Tudor period, the Levellers of Crom-

well's time, and the philosophers of the Social Contract during the last three centuries. The social dreams of agricultural communities are anarchistic, like Tolstoi's, but commercial communities develop socialistic utopias like those of Edward Bellamy[4] and Laurence Gronlund.[5]

It should be evident, therefore, that democracy is not merely a political system; it is a condition for human development, an ideal of social life, and a philosophic attitude of mind in regard to the larger interests of humanity as a whole. In its larger and truer aspects it implies the possibility of the attainment of higher civilization. In its political aspect it is merely the means whereby men attain real democracy; for the ballot in the hands of an intelligent electorate is an Aladdin's lamp, which, rightly used, will lay at its feet the social treasures of the world.

Modern Radical Experiments.

No one is yet prepared to prophesy the outcome of this movement toward a radical humanitarian form of democracy. In quiet nooks of civilization, such as Finland, Sweden, and Switzerland, in the "Wild West" of the United States, and on the fringes of civilization in Australasia, may be found the vanguard and fighting line of a newer democracy. Casting precedent to the winds, the governments in these localities are pressing to a logical conclusion the teaching that all political power should be exercised directly by the people themselves. In these experimental laboratories they seem to be trying every conceivable political policy. The electorates, made up of every adult man, and for the most part of every adult woman, are dictating the principles of the fundamental law, and are working out startling policies of reform. By building up through careful investigation a scientific system of legal regulation, they hope to restrain the monopolistic tendencies of capital, and to elevate standards of living for the "submerged tenth" and the "depressed classes." For these purposes the state does not hesitate, in one place or another, to authorize, as necessity demands, governmental ownership of lands, mines, waters, and the usual agencies for transportation; nor to embark in all sorts of business enterprises, even to the extent of lending money at low rates of interest to its citizens, and serving as "middleman" for them in the disposal of their products. These regions seem more anxious to abolish pauperism and crime than to multiply millionaires; apparently they listen more readily to the demands of labor than to the allurements of capital, and, strangely enough, seem more interested in the health and education of children than in their exploitation in the industries.

Yet, after all, these commonwealths, combined, form but a petty fraction of human society, and on the face of it there seems no possibility that such iridescent visions of democracy can ever dominate the idealism of western civilization as a whole. Progress, as a rule, goes on halting feet and with leaden step. And yet, if ever "young men see visions," there may come in their hearts an enthusiasm for a newer civilization founded on justice and intelligence. Then these seemingly rash and well-nigh chimerical experiments in democracy may pass into history as the silver lining of the clouds that hid a brighter day for mankind.

The Trend of Democracy.

From this bare outline are evident the rude beginnings of democracy in the horde and the tribe, its practical disappearance under static patriarchal monarchies, its reappearance with the rise of commerce and modern industrialism, and its struggle for rights,—rights of life, person, family, and property, the right to have a voice in government, and the right to combine in a political party so as to advocate a political policy. Generally speaking, five great influences have contributed toward this end:

(1) A marvelous development in the use of machinery, which began in the last half of the eighteenth century in England, and which has completely revo-

[4] "Looking Backward" and "Equality."

[5] "Co-operative Commonwealth" and "The New Economy."

lutionized the entire economic life of civilization.

(2) The Social Contract theories of the English-American Revolutions, and the political influences that followed from the establishment of the American Republic.

(3) The powerful changes in political systems brought about by the French theories of equality and fraternity, and the influences arising from the French Revolution.

(4) The great religious movements of the eighteenth and nineteenth centuries, which stimulated social virtues and emphasized the common brotherhood of humanity.

(5) The rise of a system of free common and higher education, and a remarkable multiplication of scientific knowledge.

Economic changes gave the conditions, religion and education stimulated and trained the mind, the political theories taught men how to hold fast and to strengthen by political devices what had been won for civilization.

Democracy Dependent on Education.

But these great influences show that real democracy comes through increased mentality, and implies a highly developed civilization. For this reason it affects the whole of social life, not simply the political aspect of it. It means that in economic life no man should be born into a condition of economic slavery; not that every person should be fed and supported at public expense, but that he should have opportunity to develop his capacity for work in whatever field seems best suited to his personality. This involves a far vaster and wiser system of education than any that yet exists. Plato, in his "Republic," rightly assumed that the chief object of government was the proper training of its citizens. No governmental expenditure brings such tangible returns as that for education. Educational systems are yet in their infancy, and largely mechanical and unscientific in their operations; but perfection cannot be attained in a day nor through a corps of poorly trained, wretchedly paid teachers.

The Japanese have shown that scientific training is the chief guaranty of victory in warfare. Material resources and a mere form of equality will never bring about national supremacy; nor does success ultimately lie with military prestige and fighting capacity. Broad knowledge, scientific training, and technical efficiency are needed in order to develop a people able to accomplish any task placed before them. Democracy ultimately depends on that kind of training, and economic supremacy in the twentieth century will be attained by that state which spends its treasures most freely in the wise education of its citizens.

Democracy and International Policies.

The influence of the modern spirit of democracy is well illustrated in the broader national aspects of the day. Ancient states, in their relations one to the other, were narrow and intolerant. They were suspicious of one another's motives, treacherous in their dealings, and considered war to be their natural condition. Since the development of the democratic spirit, international law and diplomacy have brought about a different attitude of mind. Commercial needs and treaties necessitate joint agreements among states, which meet in international congresses, discuss matters of general interested states. Throught the process of policy. Joint action is taken whenever possible; rival interests adjusted and harmonized by arbitration and mediation; wars are kept from spreading by careful diplomacy; and the terms of peace dictated by a conquering state must meet with the moral approval of other interested states. Through the process of naturalization, citizenship assumes a new form. By joint agreement of states a person now may withdraw from his parent state, forswear allegiance to it, and secure citizenship in the state of his choice. If in his new home he prefers to retain his natural citizenship, he will be as carefully safeguarded in his rights, though an alien, as any citizen of the land. This great privilege, now so freely granted, is rapidly breaking down narrow racial barriers, as citizens of many states, persons of different races, mingle in social and business life, exchange ideas, intermarry, and develop a cosmopolitan

race and civilization that ultimately may banish entirely the spirit of suspicion and war.

In their internal policy, states rely less on the clinched fist, and more on the gray matter of the brain. Intelligence at home is a guaranty of success abroad. Service in consular and diplomatic administration increasingly depends on trained and proven capacity. The quality of the personnel of the civil service is steadily rising through administrative requirements; improvements in governmental machinery are eagerly sought and tried; and legislation is losing much of its former crudeness, and becoming scientific.

Democracy and the Larger Interests of Humanity.

The spirit of democracy also implies a kindlier and more sympathetic religion and higher standards in moral life. This is shown by the growing humanitarianism of religion, and the rise of numerous agencies for the alleviation and banishment of human suffering. Criminal codes are becoming humane, cities are vigorously pushing the betterment of vicious conditions in social life, and labor organizations countenanced by the state are working earnestly for the social and economic improvement of their members. Intellectual development, freed from the incubus of dogmatism, has broadened out into an attempt to understand the whole of life, and through its achievements in science has made modern civilization progress by leaps and bounds. The spiritual and the æsthetic side of life has been deepened by a truer insight into ideals of harmony and beauty, derived from a wider experience and knowledge of physical and mental phenomena. Life for the average man has become a happier, broader, and more generous existence than that endured by his fathers. We realize now the futility of the old belief that goodness and wisdom are innate only in the privileged classes. By throwing open the opportunities and prizes of the world to all men, irrespective of birth, latent energy and capacity have come to the front. One needs but to investigate the pedigree of the greatest men of modern times to see that a few centuries ago the ancestors of such men were probably slaves and serfs. Had old-fashioned conditions persisted, the great achievers of modern civilization would in most cases he humble laborers on the estates of some robber baron. After all, the real aim of social life is not to develop a small class of highly developed persons of special privileges, but rather to attain the real aim of the state, the development of an energetic, intelligent, citizen body and high standards of social life.

Leadership in a Democracy

There was a day when the absolute monarch seemed the ideal of human greatness. The names of such are scattered throughout time. But their age has vanished. The masses below have surged to the surface,—they will not be denied; the age before us is the age of the free and aspiring many. In such an age the strong man is the leader of thought. He wins following by the constraint of a powerful mind and a virile character. He appeals to reason and to the higher emotions. He looks far into the future, and his constructive imagination is a lens through which the people may see clearly things as they are and as they are to be. His qualities must be higher than those of a despot. The freely followed leader of a free people is greater far than emperor or king.—Harry Pratt Judson, President of the University of Chicago.

Philosophic Essays on Law

BY WILLIAM W. BREWTON

of the Atlanta Bar

Tenth Essay: The Absolute Lex

Part One

"The best law leaves least to the breast of the judge."—Francis Bacon.

HUMAN knowledge as science, if its province be empirical, is measured by apprehension. Its approach to perfection is therefore determined by the latter's status as regards the same. For human knowledge, under systematic arrangement called science, can be no nearer perfect than mental appreciation of the extent of its *data* will admit of perfection. Mental *reach*, to be less pedantic, is that precedent condition determining scientific extent of validity. So far as regards validity, all sciences are conditioned alike. Imperfection in one science exists for the same reason that it exists in any other science. For man has not a number of minds to which he will apportion a variety of subject-matters. Man has one mind which has builded all the sciences. In achieving science, man does not operate a series of dissimilar minds respectively adjusted to a series of dissimilar subject-matters; but he operates over them all the one mind which he possesses. If the same mind, then necessarily the same mental faculties, are responsible for all the world's sciences.[1] This being true, it follows that a single fundamental cause underlies all scientific invalidity throughout the world—the limitation of mental reach.

It could have been hoped that an arbitrary condition of antithetical elements would never characterize general philosophy,—which is the statement of the essence of human knowledge. For when the elements of knowledge, the mental bases upon which scientific content is builded and from which scientific synthesis progresses, are at variance, the proper interrelation of acquired scientific content is hindered. Inconsiderable reflection is sufficient to reveal that fundamental antipathy existing among the several departments of human learning is a condition altering in a most effective degree the advancement of the sciences. For such a state clearly indicates an unpardonable limitation of insight on the part of the world's thinkers,—insight into the true nature of the underlying principle in limiting and more or less governing all science. If an irreconcilable state, however slight, characterizes the sciences in regard to their elements, the respective principles with which the mental construction of each begins, a similar state, marked by a more noticeable degree of confusion, will characterize the relation of their respective, attained subject-matters.

Since all sciences spring from one source, that of the human mind's setting the principles of thought in operation over a particular subject-matter, it is obvious that it is not the human mind in any of its principles that particularizes the sciences, but that it is their respective subject-matters that do so; that is to say, *ab initio* all science is a unity, and acquires distinct departments only as the external world furnishes to it the numerous different matters as its content. The different sciences now in existence each

[1] The reader will perceive that it is not necessary here to dispose of any question concerning what particular faculty may predominate over any other in the formation of a science. It would be well-nigh, if not indeed, futile to consider such a problem, if the same were even pertinent.

progressed from one and the same category of mental principles; the content of each science, representing itself to the mental principles, having been seized upon by them, as it were, and synthesized by them as it accumulated. Since all scientific subject-matters are synthesized alike, by the same agent which employs in each case the same *modus operandi*, it is thus the subject-matters themselves which are particular, and not their scientific formulation.

But it is possible for the scientists, those whose office it becomes to apply synthesizing thought to worldly matter—to achieve science—to prevent the departments of human learning from entering into as complete an interrelation as their true natures will allow. By arbitrarily establishing the underlying principles of one science at variance with those of another, the true status of unity in initial mental elements is obscured, and the value derivable from the universal recognition of this unity is lost. For a condition of antipathy, so to speak, set up in regard to the elements of the sciences, affects the sciences throughout their growth, hindering the reciprocal and complementary relation which should exist between their respective truth. The departments of learning, though distinct in their subject-matters, are marked by no fundamental antithesis; for each progresses from the same source, and, as science, is governed by it. The sciences are but particular representatives of the operation of the one category of mental principles. Each, therefore, represents what these principles discovered for synthesis in one realm of the world of matter, and which they failed to find in any other realm. The principles, ever reaching out into all spheres of matter, accumulate as one science all matter which they find in one realm, doing likewise in regard to other realms. So that the sciences have a definite relation in regard to themselves respectively, and in regard to the totality of human knowledge,—they are factors in the totality and complements of each other. And it therefore very naturally falls out that as the sciences become more diversified, their subject-matters are found to be similar, to supplement each other, and, in the case of many of them, to invade each the province of the other. Man then begins to appreciate more and more the close relation of all things in the world, and to understand the high efficiency which lies in associating and comparing all things in the world. He should therefore not arbitrarily obscure the true operating forces and methods back of all scientific attainment, but should leave free and clear the underlying mental principles of the sciences in order that there may be attained maximum unity in their content. If these underlying principles, the *method* of the sciences, are left free and clear, characterized by no contradictions arbitrarily posited among them by man, the content of each science will indefinitely interrelate with the content of all. Then the sciences will co-operate with each other throughout the world, each extending beyond its own formal province, and associating itself with and complementing every other. And this is the true end of all the formal divisions of knowledge,—namely, that they shall become unity in the highest attainable degree. For if the method of all science is a unity, its matter should approach the same status; which will logically and inevitably be the result, if man will allow the progress, the development, of each science to begin unclouded by any arbitrary dogma regarding its relation to the world of matter, to all science.

The duty resting upon the world's thinkers, then, is to preserve uncorrupted a true understanding of the one unity of mental principles which conditions and directs the systematic arrangement of all worldly matter, and which divides it into suitable and commodious departments. For here all the sciences meet upon common ground, where the status of each is the same. And whatever limitation there may be characterizing the mental unity will characterize each formal science which it constructs.

Our *dictum*, therefore, that invalidity in all science is due to the limitation of mental reach, is amply borne out. And it must follow that, if the scientific thinkers of the world will discover here the inevitable cause of whatever is defective in all the sciences, they then will not commit the error of estranging the

sciences by searching for this cause elsewhere; that is to say, by searching within each science for the cause as regards it. For the apprehension is alike limited in regard to all subject-matters which are merely the arbitrary arrangements of man; and by a proper recognition of this truth, all such arrangements are necessarily bound together at their bases. If thus unified in their elements of method, which are to direct how their subsequently accumulated content is to be arranged as science, there is established a fundamental control, which will be capable of bringing about a unification of content of the sciences in the highest attainable degree—to the end that all departments of attained knowledge shall be mutual aids.

Now if apprehension be the measure of the validity of all sciences, it is so as regards each of them, and necessarily so falls out in the case of the Law, which is the science of administering justice. The validity of the Law, at any period in its progress, is determined by the validity of the human apprehension of the Law's *data* sought to be subsumed at this period. That is to say, the Law, in a given instance, exists as valid in accordance as the human mind has apprehended the worldly matter which the Law should contemplate. The degree of imperfection characterizing mental apprehension of matter for legal content is that degree of general invalidity characteristic of the Law in any instance in its history. The limitation resting upon the reach of the mind throughout the realm of matter properly entering into legal content is also that limitation restricting the Law; for the Law is no greater than mental apprehension of its subject-matter. The extent to which method has been able to reach matter for the latter's scientific arrangement is the extent of the validity of legal science; inasmuch as the Law cannot be said to be valid for that to which it does not extend and which therefore it does not include. The Law's content enlarges in accordance as the human apprehension grasps, so to speak, additional matter, and thus brings about its inclusion in legal science. The enlargement of the Law is the result of the apprehension of additional matter for its content, the result of the operations of legal method in its constant expansion of matter already acquired, and attainment of matter that is new. An observation of the course of modern Law furnishes a broad illustration of the operations of *legal method:* both in expanding legal principles as touching their hitherto recognized fields, and in the acquisition of new fields for the general province of the Law. Legal apprehension in modern times appears especially keen; and to-day the progress of the Law surely appears to be surpassed by that of no other science. If our above condition of mental reach be adhered to as being that one which measures scientific progress, let no science offer to exhibit a record excelling the Law's. And let the exponent of no science so far restrict within his own mind the limits of legal operations as to pursue a course of conduct derogatory to them, lest summary disillusionment reveal to him their true scope and himself to be within their toils.

But legal apprehension, mental reach as regards the Law, so far as relates to it as the measure of the Law's approach to perfection at any period in its progress, regards principally the Law's acquired content at that period, rather than the acquisition of new subject-matter. It is the existing, established status of legal science with which it concerns itself most; for not the entrance of the Law into new fields, but how near perfectly it has apprehended its existing scope is most important in investigating the conditions determining an absolute Law.

Legal matter, human affairs comprehended within laws, when formulated into a systematic arrangement of principles and rules embodying it, is the Law. It follows that the Law, as a science, has that degree of merit which is determined by the extent to which the mind has gone in its understanding of the matter. If at any given time the matter is completely apprehended; if in a given period of time every phase of the Law's content, every phase of all human affairs and relations embraced by the Law under its synthetical principles or rules, is appreciated *ad ultimo,* then and at that period is the Law absolute. For then the Law may be said to cover its field, and to have embraced within its synthesis, its

quantum of matter methodically arranged, all the varied aspects of that matter, its distinctions and dissimilarities. The Law is absolute when its rules appreciate to the ultimate its content; that is to say, all worldly matter, throughout its intricate array of phases, must be appreciated and regarded, if the Law is to be completely and particularly comprehensive, or absolute. A single law may be so designated, if all matter subsumed under it, which composes its content, is regarded by it; and for every particular law to be so determines legal science as such.

A law is a principle or rule, or a number of them, regarding certain of the affairs of man, which, as we indicate, compose the law's subject-matter or content. The law, that is to say, the principle or rule, may comprehend its matter bodily, or *en masse,* and yet fail to do so particularly, or *speciatim.* A law may fail to appreciate its own content which it nevertheless embodies or comprehends. A law that is apprehensive of the entirety of its subject-matter is an absolute law. It falls short of being absolute, if it fails to apprehend *distincte* that which it comprehends *en masse.* To illustrate: a law regarding the relation of contract, which, in including within itself provisions covering all the generally recognized essentials of the relation, yet contemplates as part of its subject-matter a question of consideration, or of object, or of operation, or of some other essential phase, which produces an unfortunate conflict with public policy, or with rights justly established and vested under a consensus of legal acceptation and opinion, or under which obscurity and confusion is produced, is a law which fails to appreciate throughout that which is embraced within it; and is a law whose perception is lacking in penetration, and is a law which is consequently lacking in discrimination. The Law's perception fails to reach all phases of matter included within it, and the Law therefore fails to perform those distinctions which would otherwise serve to exclude the undesirable, the detrimental, or the unwieldy portions of its content.

It is the human apprehension which is that faculty sufficiently versatile to deal, in any degree approaching perfection, with the problem of clarifying the Law and adding to it only that matter which it should properly embrace. For this faculty may be regarded as a *critical perception,* which both discovers and refines that which is to be included within the Law and which is to be contemplated by it. It is of importance and value to ascertain somewhat in more concrete form than above set out, the operation of this office in legal science. For nothing in the whole realm of the Law as a science can redound more to its permanence and strength than *legal discipline.* It shall be our purpose to determine in particular terms the description of the Law absolute,—Law conscious and apprehensive of all that it contemplates. To what degree of success we shall attain, the sequel will show.

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Alterations in Documents

BY WEBSTER A. MELCHER, LL.B.

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WHEN one person holds a document purporting to have been executed by another in favor of such holder, and the maker alleges that the document has been altered since execution and delivery so as to become more beneficial to the holder or to injuriously affect the rights of the maker, the familiar rule of judicial procedure is to admit evidence of such alteration to the fullest extent.

Perhaps the most frequent form of such situation encountered is where the words "in full to date," or "in full of all demands," or their equivalents, are claimed to have been wrongfully added, after execution, to receipts or to checks, representing payments of debtors to their creditors.

The author, however, in the course of his long experience in the examination of questioned documents, has run across many other varieties of such difficulties: The amounts of pecuniary obligations have been raised; dates have been changed, so as to avoid statutory objections, or to make the document do double duty by applying to a different transaction; names of parties have been changed; material notations have been added to accounts; other items have been added to receipts; other clauses have been added to contracts; blank spaces on papers have been used to convert execution and attestation clauses into judgment notes, and to change orders for the collection of rents, or the payment of moneys, into testamentary documents; and many other peculiar phases of alterations have cropped out here and there.

In every one of these cases the questioned document was produced from the custody of the party entitled thereto; in every one of them the alleged alteration was material, and was either to the advantage of the holder, or to the disadvantage of the maker, of the paper; and in every instance the change was claimed to be unauthorized, and not assented to, by the maker.

When the consequent controversies reached the courts, the holders were compelled (if compulsion were necessary) to submit the questioned documents to examination by experts, and to appropriate tests thereof by the experts,—even to the extent, often, of chemical tests; and all evidence that was offered tending to establish the fact of alteration (if otherwise competent) was received.

It made no difference in the admissibility of the testimony whether or not it, directly or indirectly, connected the holder with the actual making of the alleged alteration; regardless of how the change came to be made, and who made it, anything tending to show that it actually had been made was admissible.

Then, of course, the holder had his opportunity to refute the evidence, if he could do so; but if he was unable to do this successfully, he was bound to fail in his claim based on the paper so altered, even although he himself may not have been even charged with having made or procured such alteration.

The obvious reason for such course on the part of the courts was that the holder was seeking to take advantage of an alteration in a document that was in his own custody, the effect of which change was either to benefit him or injure the other party; and this was not allowable, no matter how the change came to have been made, so long as it had not been authorized or agreed to by the other party.

Not long ago, however, the author met a most unusual situation, in which the ruling of the court seemed at first blush to be based on sound reasoning, but which on further consideration appears to be fallacious.

X, the proprietor of a large business, had numerous employees working in his office, and others who worked on the

road but made the office their headquarters in the employer's city; in the latter class was Y, who in the course of time reached the point where he was to sever his business relations with X. In the process of settling up their business affairs, X made a certain payment to Y, taking from Y a receipt therefor, the body of which was typewritten on one of the typewriting machines in the office of X, the receipt bearing Y's written signature; this receipt was placed by X on the office files, to which both X and Y (as well as others in the office) had access at the time. Pending his securing employment elsewhere, Y was allowed the privilege of continuing to use the office of X as his headquarters, and did so. In a short time, Y made demand on X for a further payment, alleging that a balance was still due him by X; X refused to acknowledge such claim and declined to pay same, alleging that he had already settled with Y and held the receipt of Y, above alluded to, for the payment made. Y insisted that the payment so made was only a partial payment, and that the receipt itself would show this; thereupon X searched his files, found the typewritten receipt, and discovered that its last two words were "on account." As soon as he recovered from his surprise X claimed that these words were not in the receipt at the time it was signed and given to him; Y claimed that they were there at such time, and as proof thereof produced a paper, being a typewritten *ribbon impression,* headed "Copy," and containing, below such heading, words and figures reading exactly like the ribbon impression receipt held by X, including the words "on account." As a result of the controversy Y sued X to recover the alleged balance due him.

An expert examination of the disputed receipt disclosed that the body of the receipt, excepting the final words "on account," was written by one of the typists in the office of X and on one of the typewriters used there, while the words "on account" were typed by a different person on a different machine (though of the same style and make as the other) also used in the office of X, and that this change was made after the receipt (in its original form) had been executed by Y and delivered to X.

A similar examination of the alleged copy held by Y showed that it was made at the time of the above addition to the original receipt, and on the same typewriter as was used in making such addition; it also appeared that, while the original receipt ended with a period before "on account," the period had been sought to be overwritten with a comma when "on account" was written, yet no such condition or change of mind was shown in the "copy."

Upon the trial, after the questioned receipt and its alleged copy had been introduced, X offered proof along the foregoing lines, in an attack upon the words "on account," and the court rejected the offer, unless X proposed to connect Y directly with the making of the alteration. The question was not raised on appeal, as Y was defeated on other grounds; it would seem, however, that this ruling could not have been sustained upon appeal, because X was not thereby seeking to take advantage of any alteration the effect of which was either to benefit him or injure his opponent; in fact their positions were exactly the reverse, and the change was against the interest of X, and in favor of Y. Furthermore, while technically the document was in the custody of X, and the alteration could not be traced directly to Y, yet it could be shown that Y had opportunity for access to the document for some time after it had been delivered to X, and at the time when and place where the change had been made, and to the means whereby the change had been effected.

It is contended, therefore, that the evidence offered was entirely admissible, and competent for the purpose intended, even without connecting Y personally and directly with the alteration, just as in all of the other more usual cases referred to in the beginning of this paper. Although the actual situations of the parties involved were reversed, their legal positions and their equitable positions were the same in both sets of cases.

Mr. Kinghorn's Intention

BY THANE MILLER JONES

Judge of Probate, Woodstock, New Brunswick

ELL, what do you think?" urged Charlie Kinghorn, anxiously. "It isn't time to think yet, in the way you mean," replied attorney Edward Palmer, of Macdonald, Munro, & Palmer, thoughtfully folding the typed sheets in his hand and reaching for the desk telephone. "Hello. Is that you, Judge? Busy? . . . Palmer, yes. . . . I would like to see you for a few minutes. . . . All right." Turning to Kinghorn, Palmer explained: "First step is to interview Judge Enright. He drew the blamed will, and nearly everything hinges on what he says."

Attorney and client left Palmer's consulting room and paused before a door farther down the corridor. Small black lettering announced, "John H. Enright, Attorney-at-law."

"Say, what kind of a man is the Judge?" queried Palmer's young client, as his attorney was about to knock. "Could he by any possibility have been a party to my cousin Ralph's devilishness?"

Palmer burst into an amused laugh. "He? Why, my boy, there's only one Judge Enright. He's been associated with our firm now, let me see, eleven years, since his retirement from the Bench. Soul of honor; almost painfully conscientious. Belongs to the old school; full of wise saws and instances that *were* modern twenty-five years ago! Been a great man before a jury in his day, though. Even yet he's no back number, believe me. Smart as a steel trap—sometimes. But he's full of hobbies and whims. Don't get him started on the feudal system, unless you wish to spend the night with him. But—a party to anything dishonorable? My boy, the last person in this world!" Palmer's eyes were merry.

Kinghorn had smiled, a little absently, at his friend's characterization; but the expression of anxious sadness swiftly returned. Palmer regarded him pityingly; then knocked.

"Come in." The two entered.

A tall, spare man of sixty-five, whose smooth-shaven, pale, ascetic face was curiously innocent of the wrinkles of advancing age, rose from his desk with an air of abstraction. Without raising his eyes to their faces he shook hands, first with Palmer, then with Kinghorn, —peering with curious intensity at Kinghorn's hand as he did so,—and motioned to chairs. In the very gesture he paused, hesitated, then turned swiftly to his desk, and stabbed with his pen jerkily at the partially filled sheet of legal cap before him. "Just one moment," he murmured.

Palmer smiled with affectionate tolerance, and, going to one of the old-fashioned bookcases that lined the walls, drew out a law report and stood reading. Kinghorn, dejectedly sprawled in a big, leathern chair, fell to listlessly studying with unseeing eyes the stiff back of the Judge. He noted the frock coat, the silk hat and gloves on the top of the desk, and the ample umbrella, leaning in the corner against the piles of unbound reports. But all the while his brain was throbbing with the painful question: "How could Dad have had the heart to do it?"

Presently the Judge, wheeling abruptly, readjusted his eyeglasses and peered at Palmer, who hastily shoved the report back, closed the complaining door of the bookcase till it caught at the top, as had been its habit for some thirty years,—it had certainly established an uneasement, —and drew a chair close up to the Judge's desk.

"To sum up, Judge, it appears that—"

"Yes?" The Judge involuntarily straightened himself up, judicially, to listen, when, struck by a sudden thought, he pounced upon his legal cap again. "I may say," he explained, apologetically, "that I am completing a manuscript on Identity as Cognizable from the Human Hand Alone—not palmistry, mark you, nor the nice science of finger prints, but that marvellous yet curiously little-understood fact that, even as the ordinary person glances at a human face and remembers the person from the face, so one can, by glancing at the hand, remember the person from the *hand alone*.[1] I venture the assertion, gentlemen,"—gentlemen of the jury, he meant, from lifelong habit,—"that, whereas the ordinary observer recognizes faces, I as readily recognize hands—"

Palmer interrupted him, laughing: "I suppose, then, that when someone calls whom you cannot exactly place, you say, 'Your *hand* seems familiar?'"

"You apprehend the idea, Mr. Palmer; but it is never a question with me of the hand *seeming* familiar. The hand *is* familiar. As I rise upon the entrance of a person I reach out to shake hands before looking into the face, and from that scrutiny alone I identify the person and immediately address him by name. This seems odd to you, Mr. Kinghorn?"

"Rather," smiled the young man, glancing at Palmer.

"The human hand, sir, is a remarkable and useful member. My subject admits of the following main classification,—and it will be conceded at the outset that—"

Palmer, still laughing, broke in gently, "I am willing to concede anything, for the moment, Judge, as—er—"

"Eh? Oh, yes. Certainly. You were about to sum up, I think that was your expression?"

"Yes. Thank you. It's this way; Maitland Kinghorn, this young man's father, died last Friday. The son, who was attending law school, received a telegram Friday morning, but arrived too late to see his father alive. Well, Monday, after the funeral, his cousin, Ralph Kinghorn,—a son of Maitland Kinghorn's brother Willis,—told Charlie here that you, Judge, had been down to Maitland Kinghorn's place some ten days before, and had drawn his will, and that the testator had instructed you to take care of it for him. Charlie came up this morning and got from you this copy of his father's will." He exhibited the typed sheets.

"Yes," interjected Judge Enright, "one of the stenographers prepared it from the original in the vaults."

Palmer nodded and continued: "This estate is worth about $650,000. Now—oh, by the way, we are not retained by the Willis or Ralph Kinghorn interests?"

"No. I merely prepared the will for the late Maitland Kinghorn."

"Well, Charlie wishes to retain—er—us to look after his interests."

"Unfortunately, being a witness to the will, I could not personally act as an attorney."

"Ah, yes; naturally he would have preferred . . . but the firm will act for him. Now, this Ralph Kinghorn,—do you know anything about him?"

"Merely this," said the judge, "that he is a medical student, and—there was that little case about the surgical instruments—"

"I remember. My client here is naturally dumfounded, to express it mildly, at the monstrous provisions of his father's will."

"I expected that. You wish, of course, to hear the circumstances. This Ralph Kinghorn telephoned me,"—the Judge consulted a small diary,—"on the sixth instant, that his uncle, Maitland Kinghorn, wanted me to hurry down and draw his will. I seldom, as you know, go out of town; but he insisted that his uncle had got *me* into his head, and would have no other." The Judge paused, polished his glasses with a silk handkerchief, and, smiling half apologetically, explained: "My reputation among some of the older people still draws—"

Palmer laughed in assent. "They tell anecdotes of the Old War Horse, as they call you, sir, from one end of the state to the other."

The Judge smiled deprecatingly,

[1] Satisfactory arrangements regarding publication of this manuscript—some 60,000 words—have unfortunately not yet been fully completed.

frowned slightly at "Old War Horse," then resumed: "I motored down. It was dusk when I arrived. The old house looked deserted and lonesome 'way back there in the pines—a lonesome place, I should judge, Mr. Kinghorn?"

"It is lonesome enough now, at any rate," sighed Charlie Kinghorn.

"Ah—pardon me. I had not meant to—er—well, the old gentleman was propped up in bed. Ralph brought a lamp, and, placing it on a little table near the head of the bed, said: 'Uncle Maitland, Judge Enright is here.' I shook hands with the testator, and then carefully took his instructions re the will. Ralph Kinghorn was the only other person present in the room—"

"Where was Ralph's father, Willis Kinghorn, the testator's brother?"

"I did not see him. I am not acquainted with him, either. He wasn't there. Just the testator, and Ralph and myself. I may say that, after taking instructions and before preparing the will, I intentionally engaged the testator in considerable conversation, and convinced myself—there cannot be the slightest doubt of testamentary capacity."

"You will go as far as that?" exclaimed Palmer, regretfully."

"Absolutely."

"But," persisted Palmer, indignantly, "did he give any reason for this most unnatural disposition of property? out of an estate worth, say, $650,000, he gives his only child, Charlie, a paltry $5,000, and all the rest and residue he gives outright and unconditionally to his nephew, Ralph Kinghorn, and appoints Ralph's father, Willis, sole executor."

"There was a reason expressed." Judge Enright glanced half pityingly, half accusingly, as he spoke, at Charlie Kinghorn.

"Well?"

"I took the trouble to interrogate him upon that precise point. Er—I put it up to him, as the young men say. I asked: 'Let me see, Mr. Kinghorn, you are worth how much?'

"'Between six and seven hundred thousand dollars—why?'

"'And you are giving your only child, a young man with his way to make in the world, and used to sufficient funds, only $5,000 out of all this?'

"'Pardon me, Judge, but what can that matter to you?'

"'As a solicitor, I might be asked—later—if—in my opinion—I thought you were fully aware of the natural objects of your bounty, in case there was a contest over your will, after your decease.'

"'Put in a clause that if anyone fights my will they lose their legacy!' the old gentleman burst out at that."

"And I observe that you did," interposed Palmer.

"Naturally," replied the Judge; "and you will observe, too, that I was careful to make a gift over—"

"That was prudent, though perhaps not necessary."[2]

"'Doubly sure' is a good rule, sir," rejoined the Judge, with dignity.

He polished his eyeglasses, made a hurried note on a pad, then resumed: "The testator seemed excited over something. There was a slight recurrence of his heart trouble. I recall that his nephew administered some medicine from a bottle on the little table. After a few minutes he seemed to feel easier, and, turning to me, said: 'I suppose, Judge, that I had better explain,—though the young whelp don't deserve even this $5,000.'"

Charlie Kinghorn buried his face in his trembling hands, and his shoulders shook.

"Eh? Oh, I understand. Naturally, naturally Poor boy! I had not meant to—"

"Go on," suggested Palmer, after a sympathetic glance at the miserable young man.

"Well, the testator explained: 'Judge, that boy of mine has always been a good boy, till last winter, when he got into tow with that Stanhope minx. Perhaps you don't know old Tom Stanhope? Well, then, you don't want to! He's one of the damnedest rascals in this state. He is my enemy, and has been for the past forty years, at every turn. He's a low, infernal scoundrel. And to think

[2] Smithsonian Inst. v. Meech, 42 U. S. (L. ed.) 793; In Re Miller, 23 L.R.A.(N.S.) 868.

that a Kinghorn should have so lowered himself as to run after one of his brats—,' "

Charlie Kinghorn sprang to his feet, his face white as paper, his mouth working painfully. "To think that Dad said that. Oh, Dad, Dad—"

Judge Enright, at a sign from the intent Palmer, went on: " 'And, Judge, when I spoke to him about it this spring, he was as stubborn as a mule. He said she was a beautiful, unselfish girl—Hurr! After my money!—and that he loved her, and she loved him, and such stuff. I told him, Judge, that no Stanhope would batten on *my* money, and I meant it. And that's the reason I'm making this will.' "

"I didn't understand him in just that way, really, Judge," interrupted Charlie Kinghorn, appealingly; "I understood him that he would *rather* that a Stanhope wouldn't—"

"I am merely accurately repeating the conversation as it occurred," went on the Judge, frowning slightly.

"Yes, yes; go on, Judge," suggested Palmer, soothingly.

"I even recall," corroborated the Judge, still slightly annoyed, "that the testator appealed to Ralph as to this talk he had had with his son. 'Ralph,' he asked, 'I am not exaggerating the defiant attitude of my boy—you overheard the quarrel?' 'Yes, uncle,' replied Ralph, 'I happened to drop in—by chance.' "

"He was always dropping in—by chance," exclaimed Charlie, bitterly.

Judge Enright proceeded, with an access of dignity: " 'But,' I ventured to protest, 'is the girl personally not a worthy female?' "

Palmer smiled, in spite of the stress of the moment, at the characteristic phrase.

" 'That's not the point. She's a Stanhope, and that's enough for me,—as it should be enough for any son who expects to profit by my hard-earned money. I have lived in this country all my days, and this disgrace is killing me.' "

"Oh!" gasped Charlie Kinghorn, shrinking as from a blow. "I never knew that dear old Dad felt that way. And when I went back to college Dad wrote me as usual, sent me some money, and—"

"Did he say anything about the—er—Stanhope matter?" queried Palmer.

"Y—yes; he did say that I had better think things over very carefully; that a father's opinion should have some weight with a good son."

Judge Enright nodded significantly to Palmer.

"And what did you reply to that?" persisted Palmer.

"I—I didn't reply to that. I thought I could—well—tell him better, talk about it face to face, you know. Letters seem so cold—"

"You see, Mr. Palmer," exclaimed Judge Enright, "the old gentleman thought that his son was prepared to ignore his wishes. That accounts for what he said to me: 'I am going to give him enough to put him through school and a little start in life, nothing more. To my nephew Ralph, here, who has always been a good boy,—at least, since he arrived at years of discretion,—and who has attended me so unselfishly in my heart trouble, I am going to give my property as I have directed. He'll know how to keep it, and will bring no disgrace on the name.' "

"I think I see," interjected Palmer. "Ralph and his father Willis were playing this Stanhope game on the old gentleman to the limit—"

"It wouldn't matter in law, I take it, Mr. Palmer, even if they did keep the testator's indignation from cooling—"

"Oh, no," admitted Palmer,[3] "it merely explains—"

"That's the curious part of it, Mr. Palmer," broke in Judge Enright, with a puzzled wrinkling of his forehead, and polishing his glasses with vigor. "That's the mystifying part of the whole thing, if one is inclined to the theory that these Kinghorns kept inciting the testator, for this Ralph Kinghorn actually remonstrated with his uncle. 'Uncle,' he urged, 'couldn't you give more to poor Charlie? I don't wish to condone his conduct regarding the Stanhopes—they are our enemies; but he is your own son, and as the years go by, should he not be enjoying the money which you have worked

[3] Ginter v. Ginter, 22 L.R.A.(N.S.) 1024.

so hard to save for him? Don't let any sudden feeling—'

"'I am the one to decide that, Ralph. It is generous of you to speak up for him, it is like you; but I have fully made up my mind.'"

Judge Enright paused, and peered into Palmer's mystified face. "I must admit, Mr. Palmer, that this Ralph showed a particularly fine spirit."

"'Methinks the fellow doth protest too much,'" mused Palmer, chin in hand. "Most too good to be true. Didn't it ever happen to strike you in that way, Judge?"

"I am, unfortunately, perhaps, not prone to ascribe to my fellow men the lower of two possible motives."

"Far from it, Judge," laughed Palmer. "You certainly, in your dealings with men, embody the maxim of the criminal law, 'Every man is deemed innocent until he is proven guilty.' That's the reason you are—held in such esteem; but as a lawyer, now—"

"Yes, yes, I know, Mr. Palmer; but I could see nothing. Rather the reverse, as I have explained."

Palmer sighed. Here was a case that was beginning to assume ominous strength. He had said to Kinghorn that so much hinged on what Judge Enright said; and he realized that what he had said was adverse to their hopes. Stubbornly he went on. "And so the will was prepared?"

"Yes. I called in my chauffeur, Williams,—Ralph naturally could not act as a witness—"

"Certainly not."

"Called in Williams, and he and I witnessed the will, and signed as such. The testator was suffering a good deal with his heart by this time, and he asked me if it would be legal if he just made his mark; would I write the signature for him, and he would make a cross—"

"And you said?"

"I said, 'certainly.'[4] I said further," —coloring slightly for was there not in Palmer's question a hint of legal inaccuracy?—"that if he wished he need not even discommode himself to the extent of making his mark;[5] but he seemed to wish, although at some cost of painful movement, to make his mark, at least, on the will."

"I see," said Palmer, thoughtfully; "and you and Williams saw him make his mark, and he acknowledged it as his signature in your presence—in the presence of both of you?"

"Certainly. I am always extremely careful of the formalities. I took particular care to watch, and, in fact, both Williams and I bent over the bed as he took the pen in his trembling, bony hand, and slowly made a cross in the space left for that purpose."

The three sat in silence for a moment. Then, stubbornly, Palmer went again into some of the details. Nothing of any importance was elicited. At last the judge said: "Of course, it is extremely regrettable. Still, I naturally felt it my duty to draw the will, where the testator was perfectly competent, although I might deplore—I do deplore—the rupture that resulted in—"

"Yes, but—"

"It is simply one of those unfortunate cases, not by any means rare, where the child, impulsive and a little inconsiderate, perhaps, is injudicious enough to go contra a hot-tempered parent's antipathies."

"I don't feel," muttered Palmer slowly, tapping a forefinger against his lips, "that it is *simply* that."

"What else, then? The circumstances negative any fraud or undue influence, under the cases. The will was properly executed—"

"I admit that I cannot place my finger on anything wrong—"

"Because it isn't there, Mr. Palmer." The Judge's tone conveyed a polite but detaching regret. He was restive to return to his more important manuscript. Though naturally sympathetic, he regarded the incident as closed. There had been so many miseries he had witnessed in his long career.

"Just one question, Judge."

"Yes, certainly, a dozen. I am—"

"Did you see the attending physician?"

"No. Ralph spoke of a Dr. Spaulding —said he would have Dr. Spaulding call in the morning unless the heart got easier. I did not see him."

[4] Sheehan v. Kearney, 35 L.R.A. 102.
[5] 30 Am. & Eng. Ency. Law (2d ed.) 585.

"Dr. Spaulding next," announced Palmer, briskly.

Palmer's car took them to Hamstead in forty minutes.

Dr. Spaulding listened in silence. "Mr. Palmer," he said at length, "I have been trying to recall one irrational word or act of Maitland Kinghorn's during the past thirty-two years that I have known him. I cannot. He was one of the most level-headed men in this country. Then, too, in his heart trouble there was no fever. There was no chance, pathologically, for delirium or hysteria. I saw him on"—consulting his ledger—"on the fourth, and again on the seventh,—you say that the will was executed on the sixth?—and he was as usual."

"Did the old gentleman send for you on the seventh?"

"As I remember, Ralph telephoned—"

"All right. Go on, Doctor."

"A perfectly sane, healthy, sound man, except for that bad heart of his, brought on by a too strenuous, hard-working life. I would have to be most emphatic on the question of mental competence. I am sorry, for—for I—well, to be frank, I don't like the Willis Kinghorns."

"Why?"

The big doctor laughed. "Doctors should have no antipathies. Well, I don't know that I can express it. Willis himself, though very like his brother in physical appearence, is strikingly unlike him in character. Maitland was sagacious; his brother is crafty and hypocritical. Maitland was a courageous man; the other will show the yellow in a tight place. Maitland died worth, what, half a million? and, well, Willis—although I see he's spruced up, looks as though he'd got a new lease of life—"

"He has," interposed Palmer, bitterly.

"Hasn't accumulated much besides debts. He's always trying to take short-cuts to easy money. And that precious son of his, Ralph—"

"Why precious?"

"I shouldn't criticize; he's going to be one of us medical chaps, too, if he can steal his way through the examinations."

Palmer nodded.

"But," burst out the big doctor, "of all the two-faced pups! Why, I believe he'd—" The doctor stopped, hesitated. "I guess I'd better not go any further."

"It's safe with us, if you're thinking of slander."

"I'm not thinking of slander. I'm thinking of charitableness."

Palmer laughed. "I think I've got his number."

"Where now?" asked Charlie Kinghorn, as the two got into the car.

"Down to the old house 'way back in the pines."

"Home!"

"Yes. I want to talk with the gardener—you say there was an old man, Hilman?"

"Yes; but they've discharged him—since last Friday."

"Can't you find him?"

"I think so. His son works over at the electric plant at Clifton."

It was late that night when the old man was found.

"Mr. Kinghorn, his father,"—pointing with his stubby pipe at Charlie,—"sent me over to West Hamstead on that Wednesday,—the sixth,—for some special seed. When I left he was fairly easy,—it was his heart, sir,—and when I come back, by the train, at about eleven o'clock that night, Mr. Kinghorn was sleeping. Next morning he was bright and cheerful, and we walked over to the intervale, for to see if the ground was dry enough for planting. I never knowed they was anything wrong with his head, was they?"

"That's to see about, Mr. Hilman. Did you ever see anything queer in connection with Ralph's behavior toward him?"

"Ralph? Well, I don't know as I can say that. He was over to our place—his own place is half a mile back of the big hill—quite a bit since Charlie went back to college after Easter. He was talking to him quite a bit in the library. Used to give him his heart medicine. I got to think a blamed sight more of him than I used to." The old man smoked reminiscently. Then, catching the trouble in Charlie's face, asked: "Did your daddy leave everything right—his property? Maybe I shouldn't ask."

They told him, and left him muttering suspicions on "them hill Kinghorns."

Two days later, Charlie Kinghorn asked his attorney that question again: "Well, what do you think?"

"I think, by all the rules of law and under the facts in the case,—as I know them, and they are pretty clear,—that you have no more chance, poor boy, than a—than a slow freighter against a submarine. But—"

"But?"

"Just that—*but*. I won't give up yet. We'll watch the probate from start to finish. We'll cover every possible point with allegations. I'm afraid, though, it will be *our* finish." He sighed ruefully. Palmer had a way—perhaps an unfortunate way?—of making his client's case his own, to the extent of worrying himself half sick over it. Still, that sometimes brings results. The golf rule, keep your eye on the ball, and on the place where the ball was, even after you've hit it, works rather well in law. At any rate, don't pick out the particular hole you're going to slice into when you're taking your back swing. Worry, but don't get nerves.

"After all, Charlie," Palmer confessed, "there may be nothing wrong in the business. As Judge Enright says, it may be just one of those—"

"But I can't think that Dad in his sober senses would let what appeared to me at the time to be only a half-hearted objection to my—my friendship with Miss Stanhope carry him to such lengths. I know he was sorry, but I never thought I had grieved him so. My mother died when I was nine years old, and Dad and I were, well, close to each other. He was very fond of me, and proud of his only boy, and had great hopes that I would do well at the Bar. And what cuts deepest is to have to remember—always—his bitterness toward me, and that he said my conduct was killing him."

Near the close of the third day in the Kinghorn will case, Edward Palmer, counsel for Charlie Kinghorn, sat gloomily at his place at the attorneys' table. The witnesses, Enright, Williams, the chauffeur, Hilman, Dr. Spaulding, Ralph Kinghorn, and others of less importance, had come and gone, and left Palmer hopeless. Some unimportant evidence was now being given, of which he already knew the import. It left his mind comparatively free. He was beaten, he felt that. And yet, just as strongly as he was convinced that there was nothing proven against the will, just so strongly was he persuaded that the will did not contain the intention of the testator. In Ralph Kinghorn's lividly pallid face, with that faint, peculiar, pink effect about the eyes,—Palmer wondered vaguely if the man was addicted to drugs,—he could read, *what?* Some nameless, monstrous thing: *what was it?* There seemed to be an answer; and it was beating as though with frantic hands at the stubborn doors of his brain,—insistently. Palmer, in his weariness, got the fanciful feeling that it was to be a race between the slow tedium of the court's progress and that dim bombardment. Patiently he went over each point again. Nothing. He studied the faces of the witnesses. Nothing. The face of the Willis Kinghorn,—Palmer recalled that he had not in fact seen Willis Kinghorn about the court until, a few minutes before, he had quietly slipped into a rear seat by one of the pillars,—what was there in the expression of those beady black eyes, that hypocritical grin? Nothing tangible; yet the secret lurked there.

Mr. Steve Skinner, Ralph's principal attorney, had just turned to Palmer with the customary, "The witness is yours, Mr. Palmer." As his glance met Palmer's he grinned, unpleasantly exposing two very prominent front teeth. Skinner was jubilant. It was not often that he was able to "down" Edward Palmer. He literally beamed. Figuratively, having regard to the recompense of the—costs, he licked his chops.

Palmer nodded absently, and, half rising, said: "Nothing, your Honor," and "Thank you," to the witness.

What was the monstrous thing that was written in some undecipherable language on the dark face of Ralph Kinghorn? The sending of the old gardener away, telephoning for Judge Enright, who had not previously personally known the testator and was unfamiliar with his habits and mannerisms, the glib pleading

with the testator to use his own son less harshly. Ralph had been so cocksure. What had made him so?

The surrogate, Judge Lindsay, arranged his papers before him and coughed. "Have you any more witnesses, Mr. Skinner? Mr. Palmer? Then I'll hear you, Mr. Palmer."

"There is nothing I can urge," confessed Palmer, rising.

"No," agreed Judge Lindsay; then directed, "Perhaps the executor might as well be sworn. Is he present in court?" Willis Kinghorn rose and came forward slowly, his eyes seeking his son's. Ralph scowled, and hurriedly whispered to Skinner, who arose. "Your Honor, should the executor be sworn before judgment is delivered?"

"It's immaterial," said the Judge, mildly. "It may be two or three days before the written judgment and order are ready. Of course, they will bear date as of to-day."

Judge Enright, indulging his favorite hobby, sat studying the hand of the register. He felt, rather than saw, the presence of Willis Kinghorn as he came to the railing. His eyes, mechanically following the arm as it rose obedient to the Register's "Raise your right arm, please," came to rest at length on Willis Kinghorn's open hand.

Palmer had resumed his despairing cogitations. Ralph was a medical student. He would be up to the newest and most devilish decoctions—something, possibly, that might temporarily change a man's whole nature. The man under such an influence might virtually become another man, for the time being, a man, say, with the leaning, under a subtle suggestion, that his own father Willis would naturally have toward him, for example. His own father, of course, would have made just such provisions in Ralph's favor. Why, for the matter of that, should *anything* be taken for granted? Even elementary things? Was the testator alive when he made his mark? Has he since died? Of course he was the testator conveying his own property—*preposterous!*

Palmer was on his feet and began uncertainly, so uncanny was the wild thought that had rushed in upon him. Even then he wondered if *this* was what had been frantically beating at the doors of his brain. "Your Honor, it has occurred to me, that—er—that"—

"Wait just a moment," Judge Lindsay directed the Register. Then, "Yes? Mr. Palmer."

"That—er—"

He was interrupted by a loud, alarmed cry from Judge Enright, who suddenly shrank from Willis Kinghorn with an involuntary, "God in Heaven—*that hand!*"

"Judge Enright, what do you mean? Judge, are you ill? Attend him, someone." For the old Judge was shaking strangely, his eyes fixed in horror on Willis Kinghorn's right hand. He began mumblingly: "I—excuse me—please! I have made a curious mistake. I . . . ." The voice trailed off in pitiful uncertainty.

"No!" Palmer's voice rang through the room. It was full of a jubilant, vital something that drew every eye upon him, standing there supreme in his discovery. "You have made no mistake, Judge Enright. You never made a mistake, that way. Whose hand is that?"

Skinner arose, and began: "Your Honor, this is very—"

Judge Lindsay directed swiftly: "Recess for ten minutes."

"Whose hand is that?" faltered Judge Enright, awe-struck. His bewildered face sought for strength, for courage. He looked into Palmer's eyes. Then, desperately, with pitiful misgiving,—his own senses, were they not surely giving way?—he agonized: "The testator—when he made his mark—*that was the hand that made the mark!*" [6]

Ralph Kinghorn's face was like a fiend's. His father's shapeless lips were twitching. He dropped his eyes, and fell

[6] In Brincherhoff v. Remsen, 8 Paige (N. Y.) 488, the court said: "No one is justified" (although it does not render the execution invalid) "in putting his name to a will as a witness unless he has fully satisfied himself of the identity of the testator. . . ." And In Re McAndrew, 206 Pa. St. 366, the court said: "Assumed kinship, an imposter to make her mark to the will in the presence of possibly honest witnesses to whom the testatrix is unknown . . . and the trick is done."

to stupidly studying his lowered hand. In a sort of frenzied apprehension he made the break, "You can't tell by my hand—you *can't*—"

"Shut up, you old fool!" hissed Ralph, springing toward him.

Willis Kinghorn's face paled, then flushed to a blotchy yellow. He cowered before the triumph in Palmer's eyes. He blurted out, in his white rage at his son's affront, "You're the fool—you! You fool. You thought you was smart enough—ah! you drug-soaked fool!"

Ralph, his face a maniac's, sprang at his father's throat.

They tore him away and held him. He panted like a tired animal. He licked his dry lips. Palmer flung at him, "You drugged Maitland Kinghorn. You carried him into another room. You knew about the Stanhope trouble. You placed your father in the bed and—the rest was easy, for a fiend."

"You lie!" snarled Ralph. "You can prove nothing. There is nothing to prove. I—"

"Your father has blabbed!" laughed Palmer.

"May it please your Honor," announced Palmer when court resumed. "We are agreed that the will propounded as the last will and testament of the late Maitland Kinghorn be refused probate." [7]

"Yes," agreed Steve Skinner, sulkily.

"Well, Judge Enright," said Palmer, as the two walked down the courthouse steps, "that little science of yours, 'the human hand is a remarkable and useful member,' eh?"

"It is," assented Judge Enright, grimly.

Hane McJones

[7] In Re Jesse G. Hawley's Estate, 214 Pa. St. 525.

Character Told by Hand

A French savant contends that the murderer has a distinctive hand. His face may not be hideous, but the hands always are, and self-condemnatory. Evidence on the latter characteristic is scanty, and rests upon the investigations of the French criminologists; but as to the former it is a fact that some of the most brutal murders on record have been perpetrated by men whose countenances habitually wore a very mild expression. Deeming was a pleasant man to speak to until crossed; but some of the authorities who examined his hands declare his broad thumb indicated the born murderer. The true ball-headed thumb gives to the first phalange a round, bulbous appearance. It is short, and the nail is so abbreviated as to suggest that it has been gnawed. It is embedded in the flesh, which rises on either side and beyond it. Dumollard, a wholesale murderer, had a hand remarkable for its thickness and length of palm in proportion to the fingers. He had a significant sign, common to most murderers—namely, the almost entire absence of lines in the palm, save the three principal—the lines of life, head and heart. These lines were very strongly defined. The line of the head—the center line extending across the palm—was violently cut by the line of life running upward from the wrist. Chiromancy interprets this to foretell a violent death. His fingers were knotty and uneven at the nail phalanges.
—Nebraska Legal News.

Editorial Comment

What constitutes a state?

. . . . . .

Men who their duties know,
But know their rights, and knowing, dare maintain.—Sir William Jones.

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Expatriation Statute Construed

THE United States Supreme Court, in a decision handed down on December 6, upheld the decision of the supreme court of California in Mackenzie v. Hare, 165 Cal. 776, 134 Pac. 713, Ann. Cas. 1915B, 261, L.R.A.—, —, which denied the right of franchise to Mrs. Ethel C. Mackenzie, wife of Gordon Mackenzie, the singer. The ruling was upon the ground that Mrs. Mackenzie, having married a British subject, takes the nationality of her husband. It was brought as a test suit, and the decision was awaited with interest by women in all suffrage states.

San Francisco election officials refused to permit Mrs. Mackenzie to register as a voter. She then commenced legal action, and the case was carried through the courts to the Supreme Court of the United States.

The Federal statute in question provides: "That any American woman who marries a foreigner shall take the nationality of her husband. At the termination of the marital relation, she may resume her American citizenship, if abroad, by registering as an American citizen within one year with a consul of the United States, or by returning to reside in the United States, or, if residing in the United States at the termination of the marital relation, by continuing to reside therein." [34 Stat. at L. 1228, chap. 2534, Comp. Stat. 1913, § 3960.]

The California courts interpreted the law as applicable to women who continue to live in the United States after marrying foreigners, as well as those who marry foreigners and live abroad.

In affirming the judgment of the state court the Supreme Court of the United States holds that no exception in favor of an American-born woman who marries a resident foreigner and remains within the jurisdiction of the United States may be read into the provisions of the act that "an American woman who marries a foreigner shall take the nationality of her husband," but may resume her American citizenship at the termination of the marital relation, if within the United States, by her continuing to reside therein, and, if abroad, by returning to the United States, or by registering as an American citizen.

In response to the contention that such legislation is beyond the authority of Congress, the court maintains that it is

within the power of that body to enact the provisions of the act, under which an American-born woman who marries a foreigner forfeits her citizenship, even though she remains within the jurisdiction of the United States.

The court remarks: "It may be conceded that a change of citizenship cannot be arbitrarily imposed, that is, imposed without the concurrence of the citizen. The law in controversy does not have that feature. It deals with a condition voluntarily entered into, with notice of the consequences. . . . The marriage of an American woman with a foreigner has consequences of like kind, may involve national complications of like kind, as her physical expatriation may involve. Therefore, as long as the relation lasts, it is made tantamount to expatriation. This is no arbitrary exercise of government. It is one which, regarding the international aspects judicial opinion has taken for granted, would not only be valid, but demanded. It is the conception of the legislation under review that such an act may bring the government into embarrassments, and, it may be, into controversies. It is as voluntary and distinctive as expatriation, and its consequence must be considered as elected."

Right of those Joining Foreign Armies to Re-enter Country

AMERICAN citizens who enlist in the armies or navies of belligerent countries will have no difficulty in returning to the United States either during the continuance of the present conflict or when it is over, according to a ruling by the Immigration Bureau of the Department of Labor, reported by special correspondent of the Evening Post.

The Department has had several cases before it of Americans who enlisted in the Canadian army, and then either were wounded and sent back across the Atlantic, or who found army life strenuous and decided to desert. Immigration officers along the Canadian border were doubtful as to what treatment to accord such persons. Officials of the Department of Labor pondered long over the problem, conferred with the Departments of State and Justice, and decided that they would not try at this time to decide just what legal effect on American citizenship the cases would involve, determining not to raise the issue at all. This does not mean, however, that if any of the persons who took the oath of allegiance to a foreign government attempt to vote or to obtain passports in the future, they will find themselves enjoying the same rights as before. The general principle is that the taking of the oath to a foreign state deprives an American of his citizenship.

There has been less than a dozen cases, and the Department of Labor officials say their ruling in no way affects the legal side of the question, because a man need not be an American citizen to be permitted to enter the United States. If he were afflicted with disease or penniless, ordinarily he might be turned back; but in the case of persons who originally were American citizens or whose homes are in the United States, the Department of Labor decided to adopt a common-sense ruling, and permit them to return to their friends, waiving the usual immigration rules with respect to aliens.

Alien Labor Laws

THE discrimination against aliens lawfully resident in the state, which is produced by the provisions of The Arizona act of December 14, 1914, that every employer of more than five workers at any one time, "regardless of kind or class of work or sex of workers shall employ not less than 80 per cent qualified electors or native-born citizens of the United States or some subdivision thereof," is held in Truax v. Raich, 239 U. S. 33, 60 L. ed. —, 36 Sup. Ct. Rep. 7, to render the statute invalid under U. S. Const., 14th Amend., as denying the equal protection of the laws, and such statute cannot be justified as an exercise of the power of the state to make reasonable classifications in legislating to promote the health, safety, morals, and welfare of those within its jurisdiction.

The anti-alien act of Arizona was passed under the initiative, and proclaimed a law by the governor. It provided that no corporation or individual

employing more than five workmen should employ more than one fifth aliens.

It was contested, in behalf of an alien discharged from employment in obedience to its provisions, as violation of the 14th Amendment to the Federal Constitution, and went direct to the United States Supreme Court under injunction proceedings.

The validity of a similar labor law was considered by the same court in Heim v. McCall, 239 U. S. 175, 60 L. ed. —, 36 Sup. Ct. Rep. 78, where it is determined that the freedom to contract, secured by U. S. Const., 14th Amend., is not infringed by the provisions of N. Y. Consol. Laws. chap. 31, § 14, that only citizens of the United States may be employed in the construction of public works by or for the state or a municipality, and that in such employment citizens of New York state must be given preference, nor is property taken without due process of law, nor is the equal protection of the laws denied, by the provisions of such statute.

The last decision is not in the slightest degree inconsistent with the earlier one. In the Arizona case, as the court took pains to point out, "the discrimination is imposed upon the conduct of ordinary private enterprise," while the New York case involves the power of the state to provide what laborers shall be employed upon public works.

Colored Strand in Cordage as Trademark

THAT no valid trademark can be secured in the effect produced through the ordinary weave by using a colored strand with the undyed ones in weaving or braiding cordage is held in Samson Cordage Works v. Puritan Cordage Mills, 128 C. C. A. 203, 211 Fed. 603, annotated in L.R.A.1915F, 1107.

The alleged trademark consisted of a colored strand or spot running spirally through a cord produced by combining several undyed strands with one colored strand, and not restricted to any color.

It is well settled that no valid trademark can be acquired in the use of a color not connected with some distinctive symbol or design.

In A. Leschen & Sons Rope Co. v. Broderick & B. Rope Co. 201 U. S. 166, 50 L. ed. 710, 26 Sup. Ct. Rep. 425, the court said that it was unnecessary to express an opinion whether, if the trademark had been restricted to a strand of rope distinctively colored, it would have been valid. It is, however, suggested that if the trademark was restricted to a strand of a particular color, it might be sustained, and it is pointed out that if the color is made the essential feature, it should be so definite, or so connected with some symbol or design, that other manufacturers may know what they may safely do, and upon this ground the description of a rope containing a color is held to be too indefinite to be registered as a trademark.

But the fact that a trademark was invalid for indefiniteness of description, because no proper color was referred to in describing a strand running through the fabric, does not prevent the manufacturer from protecting an article manufactured by him with a certain colored strand running through the fabric, from imitative use by a competitor. A. Leschen & Sons Rope Co. v. Broderick & B. Rope Co. 36 App. D. C. 451; A. Leschen & Sons Rope Co. v. American Steel & Wire Co. 36 App. D. C. 456. So, it is held in the instant case where spots or strands of a cord produced by combining several uncolored strands with a colored one by long use have become associated in the public mind as representing the product of a particular manufacturer, such product, on the ground of unfair competition, will be protected against imitation by a rival to an extent enabling him to pass off his product for that of the complainant.

Government Attitude Toward Business

SINCE the enactment by Congress of the Federal Trade Commission law and the Clayton law, the Federal Trade Committee of the Chamber of Commerce of the United States has been constantly presented with inquiries, not only relative to the relationship which it might be expected would be established between the Department of Justice and the Fed-

eral Trade Commission at points where jurisdiction seems to overlap, but also as to the probable attitude of the Department of Justice with respect to future proceedings.

It was explained to the Attorney General by the representatives of the National Chamber that if he would express himself it might be regarded as reassuring to the public mind, and at the same time dispel some of the uncertainty which has heretofore existed. Several interviews have resulted between the Attorney General and members of the Federal Trade Committee. The committee offers the following summary thereof:

"Persons entering into transactions in good faith, having good cause to believe them lawful, will not be criminally prosecuted; but if their business be found violative of the law, they will be given opportunity to readjust in conformity with the law, without legal proceedings, unless consent decree in a civil suit is desired.

"The Department of Justice intends to give substantial recognition of the provisions of paragraph (E) of § 6 of the Federal Trade Commission law, which authorizes the Commission.

" 'Upon the application of the Attorney General to investigate and to make recommendations for the readjustment of the business of any corporation alleged to be violating the anti-trust acts, in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.'

"In cases as to which both the Department of Justice and the Federal Trade Commission have jurisdiction, such, for example, as those arising under the Clayton act, the Department will await the conclusion of the Commission's proceedings as to any matters in which the Commission's jurisdiction is first invoked.

"It is not improbable that the working arrangement between the Department of Justice and the Federal Trade Commission is to follow along the same lines as have been established by custom as between the Department and the Interstate Commerce Commission with relation to violations of the Act to Regulate Commerce, as a result of which arrangement the Department rarely, if ever, institutes proceedings without the recommendation or sanction of the Interstate Commerce Commission."

A Correction

SEVERAL of our California readers have called our attention to an erroneous statement contained in the article on the "Validity of a Contract Made on Sunday," published in the December CASE AND COMMENT, to the effect that the state of California, by statute, forbids the keeping open of stores, shops, and other places of general business on Sunday. Section 300 of the Penal Code, which was cited as authority for the statement, was repealed in 1883.

"The result arrived at by the author of the article, namely, that Sunday contracts in California are not void, is undoubtedly correct," writes Mr. A. E. Shaw, of the San Francisco Bar, "inasmuch as the only prohibition, which applies equally to other holidays, is to the 'transaction of judicial business,' and under this statute it has been expressly held that a statement on motion for a new trial might be served on Sunday upon opposing counsel; also that legal process served on a Sunday or holiday constitutes legal service. California, therefore, should be placed in the category of states without any statute on the subject of transaction of ordinary business on Sundays or holidays, and as recognizing the validity of all ordinary business transactions performed on such days."

Among the New Decisions

Justice, sir, is the great interest of man on earth.—Webster.

Assault — reclaiming property sold on instalment — opposing interference. The assistant of a merchant who, having sold a stove on the instalment plan, has entered into the customer's house to reclaim it as authorized by the contract upon default in payment and has taken possession of the property by consent of the purchaser, is held not guilty of assault in Biggs v. Seufferlein, 164 Iowa, 241, 145 N. W. 507, in removing the purchaser from the stove upon which he has sat down in an effort to regain the possession and prevent the removal, if no more force is used than is necessary to effect that result. This decision is accompanied in L.R.A.1915F, 673, by supplementary annotation on the right to employ force in retaking property sold conditionally.

Bankruptcy — partnership — effect on members. A discharge of a partnership in involuntary bankruptcy proceedings upon acceptance of an offer of compromise by the partners to the creditors is held in Abbott v. Anderson, 265 Ill. 285, 106 N. E. 782, annotated in L.R.A. 1915F, 668, to release the partners from further liability for debts of the firm, although the partners did not file a schedule of their individual property, and were not adjudicated bankrupts as individuals, since the partnership cannot be adjudicated bankrupt independently of its members.

Bills and notes — failure to keep collateral good — negotiability. That the negotiability of a note otherwise negotiable under the negotiable instruments act is not destroyed by a provision that additional collateral will be deposited from time to time, if that deposited depreciates in value, default in which will render the note immediately due and payable, is held in Finley v. Smith, 165 Ky. 445, 177 S. W. 262, L.R.A.1915F, 777.

Business — transfer — absence of notice—continued liability. That the proprietor of a business conducted under a tradename, who transfers it without notice, will continue liable for supplies subsequently furnished his successor by one with knowledge of his former proprietorship, although he had never transacted business with him, is held in Hendley v. Bittinger, 249 Pa. 193, 94 Atl. 831, annotated in L.R.A.1915F, 711.

Commerce — temperature of cars. The only decision as to the reasonableness of an ordinance regulating the temperature of cars seems to be South Covington & C. Street R. Co. v. Covington, 235 U. S. 537, 59 L. ed. 350, P. U. R. 1915A, 231, 35 Sup. Ct. Rep. 158, L.R.A.1915F, 792, which holds that a municipal ordinance providing that the temperature of the cars of a street railway company which is principally engaged in interstate commerce shall never

be permitted to be below 50 degrees Fahrenheit must be deemed to be invalid as unreasonable, where the undisputed testimony shows that it is impossible in the operation of the cars to keep them uniformly up to this temperature, owing to the opening and closing of doors, and other interferences that make it impracticable.

Constitutional law — indeterminate sentence — parole. That an indeterminate sentence for persons convicted of felonies does not deprive them of their liberty without due process of law, is held in Woods v. State, 130 Tenn. 100, 169 S. W. 558, which further holds that judicial powers are not conferred by authorizing a board of commissioners to parole prisoners after they have served the minimum time of an indeterminate sentence. Nor is there delegation of legislative authority in conferring upon a board of commissioners power to parole prisoners after the expiration of the minimum term of their sentences. Neither is there an unconstitutional interference with the pardoning power of the governor in conferring on commissioners the right to parole prisoners after the expiration of their minimum terms of service, and to recommend them to the governor for pardon, when the commissioners are convinced that it will not be incompatible with the welfare of society. This decision is accompanied in L.R.A.1915F, 531, by a note on the constitutionality of statutes establishing a parole system.

Corporation — concealment of misappropriation by director — liability. A director is held liable to the corporation in General Rubber Co. v. Benedict, 215 N. Y. 18, 109 N. E. 96, annotated in L.R.A.1915F, 617, for losses sustained by his concealment from it of misappropriation with his knowledge of funds of another corporation, a majority of the stock of which it owns, by an agent, for the benefit of a third corporation in which such director is interested, which misappropriation the corporation could stop if it knew of it; and it is immaterial that he may also be liable to the corporation plundered for participation in the misappropriation, since a recovery by the latter company may reduce his liability to the one of which he is director.

Courts — state court — assault. The crime of assault by an allottee Indian, upon another allottee Indian, in a state, and within the limits of an Indian reservation, not being one reserved by act of Congress to the jurisdiction of the Federal courts, is held within the jurisdiction of the courts of the state in the Nebraska case of Kitto v. State, 152 N. W. 380, accompanied in L.R.A.1915F, 587, by a note discussing the recent cases on the subject, the earlier authorities having been gathered in a note in 21 L.R.A. 169.

Covenant — restriction to dwelling house — apartment. A covenant limiting the use of a city lot to a dwelling house with the ordinary yard appurtenances to dwelling houses is held in Reformed Protestant Dutch Church v. Madison Ave. Bldg. Co. 214 N. Y. 268, 108 N. E. 444, L.R.A.1915F, 651, not to exclude an apartment house, although all the other houses in the block are designed for single families; apartment houses were not known when the covenant was drafted, and the covenant excepts stables for private dwellings.

Damages — award for incapacitating man — excess. An award of $38,000 for injuries which incapacitate for further service a railroad conductor sixty-two years old with a life expectancy of thirteen years, who was earning $1,600 per year, and which consist of a dislocated shoulder, broken ribs, and a cut on the head, which require him to remain in bed for three months, and are attended with an attack of peritonitis, and leave him with neuritis, which is probably permanent, is held excessive by $18,000 in the case of St. Louis Southwestern R. Co. v. Kendall, 114 Ark. 224, 169 S. W. 822, L.R.A.1915F, 8.

Damages — injury to spinal cord — excess. In a personal injury action, where the evidence shows an injury to the spinal cord which has permanently crippled plaintiff, virtually destroyed all earning capacity, and so paralyzed him

that he is unable to attend to his wants without assistance, it is held in Padrick v. Great Northern R. Co. 128 Minn. 228, 150 N. W. 807, L.R.A.1915F, 1, that, although the injuries are so severe, the verdict of $35,000 is excessive, and should be reduced to $30,000. This decision, with companion cases, is accompanied in L.R.A.1915F, 30, by an exhaustive and extensive note on excessiveness of verdicts in actions for personal injuries other than death.

Damages — loss of forearm — excess. All in excess of $15,000 of a verdict for $25,500 which was awarded to an experienced railroad conductor, twenty-nine years old, earning $170 per month, for the crushing of his forearm which required amputation below the elbow, was held excessive in the Nevada case of Knock v. Tonapah & G. R. Co. 145 Pac. 939, L.R.A.1915F, 3.

Damages — mutiliation of feet — inadequacy. That $2,500 is not so inadequate as an award for severing the toes of one foot of an eleven-year-old girl and mutilating the other foot, as to indicate passion, prejudice, or improper motive on the part of the jury, which will justify the setting aside the verdict and granting a new trial, is held in Montgomery Light & T. Co. v. King, 187 Ala. 619, 65 So. 998, which is accompanied in L.R.A.1915F, 491, by a note on inadequacy of verdicts in an action for personal injuries other than death.

Damages — paralysis — excess. $30,000 damages awarded to a painter earning $1,200 a year, with a life expectancy of twenty-six years, for an injury which paralyzes him from his waist down is held excessive in Penson v. Inland Empire Paper Co. 73 Wash. 338, 132 Pac. 39, L.R.A.1915F, 15, and should be reduced to $22,000.

Damages — stiffening of back and shortening of leg. Eleven thousand and five hundred dollars awarded an unskilled laborer earning $45 per month, for injury which stiffened the vertebræ of his back without injuring the spinal cord, and shortened one leg, if he recovered his health and earned after the accident practically what he did before, is held excessive in Olson v. Carlson, 83 Wash. 415, 145 Pac. 237, L.R.A.1915F, 13.

Damages — traumatic neurasthenia — excess. $8,000 awarded a widow forty-three years old, earning $10 to $12 per week, for injuries consisting of external bruises on head, arm, and hip, temporary internal injury, and nervous shock which incapacitates her for work, the chance of recovery from which is remote, if she ever recovers, is held not excessive in the Rhode Island case of Greene v. Rhode Island Co. 94 Atl. 869, L.R.A.1915F, 6.

Divorce — remarriage — reduction of alimony. That a divorced husband cannot secure a reduction in the alimony which has been allowed against him because of his assumption of additional obligations by remarriage, is held in Staton v. Staton, 164 Ky. 688, 176 S. W. 21, which is accompanied in L.R.A.1915F, 820, by supplemental annotation. This decision is supported by the weight of authority, although in some cases the fact of remarriage has apparently been taken into consideration in connection with other circumstances in determining upon the modification of a decree.

Evidence — age of minor — books of physician. On the trial of an action to recover damages for personal injuries sustained by a youth employed in a coal mine, the account books or other books of a practising physician or surgeon, containing entries regularly made in due course of business, and who attended the plaintiff's mother at his birth and the oral evidence of such practitioner verifying such record, are held legal and competent evidence to go to the jury on the question of the date of the plaintiff's birth, in the West Virginia case of Griffith v. American Coal Co. 84 S. E. 621, annotated in L.R.A.1915F, 803, on the subject of a physician's private records or memoranda as evidence of birth, death, etc.

Evidence — supporting state's witness by statements out of court. That the state, whose witness to identification of accused in a murder case has retracted his testimony on cross-examination, cannot present statements by him out of court for the purpose of impeaching him with respect to or overcoming the retraction, is held in People v. De Martini, 213 N. Y. 203, 107 N. E. 501, annotated in L.R.A.1915F, 601.

Evidence — X-ray pictures. X-ray radiograph or shadow pictures are held admissible in evidence in the West Virginia case of Griffith v. American Coal Co. 84 S. E. 621, L.R.A.1915F, 803, when shown to have been made with trustworthy instruments, and properly taken, in connection with the evidence of witnesses expert in the use of such instruments and skilled in making, reading, and interpreting such pictures.

Highway — wire between sidewalk and curb defect. A wire stretched, without negligence, to protect a grass plot, between an adequate sidewalk and the curb, is held not a defect in the street in the Alabama case of Birmingham v. Carle, 68 So. 22, L.R.A.1915F, 797, so as to bring one who falls over it in attempting to cross the street diagonally within the protection of a statute rendering the municipality liable for injuries caused by a failure to remedy some defect in the street.

Homicide — mistaken treatment of victim — effect on liability. One who shoots a pregnant woman, causing a miscarriage, which in turn causes septicæmia and death, is held liable in People v. Kane, 213 N. Y. 260, 107 N. E. 655, for the homicide, although the septicæmia might have been avoided had different treatment been adopted by the surgeons attending the injured woman. Recent cases on the criminal responsibility of one who inflicts a wound on another, resulting in the latter's death, as affected by negligence or lack of skill in the treatment or care of the wound, accompany the foregoing decision in L.R.A.1915F, 608, the earlier authorities having been gathered in 22 L.R.A. (N.S.) 841, and 28 L.R.A.(N.S.) 655.

Homicide — self-defense — right of assailant. That one who, when armed with a deadly weapon, committed an assault, was so hard pressed by a counter attack that he could not withdraw from the combat, is held not to give him the right to use his weapon in self-defense in the North Carolina case of State v. Kennedy, 85 S. E. 42, which is accompanied in L.R.A.1915F, 656, by a supplemental note on the question of withdrawal as affecting the right of an aggressor to rely on self-defense.

Indemnity — costs of appeal — liability. One contracting to perform work for a city, who undertakes to indemnify it against liability for injuries due to his negligence, is held not liable in Murphy v. Yonkers, 213 N. Y. 124, 107 N. E. 267, annotated in L.R.A.1915F, 598, for the costs of an appeal taken by the city without his consent, from an adverse judgment in a suit for such injuries, in which the contractor refuses to participate.

Innkeepers — lien — apartment house keeper. That the keeper of an apartment house is not, with respect to suites furnished and rented for housekeeping, within the protection of a statute providing that the keeper of any hotel, tavern, or boarding house, or any person who rents furnished rooms, shall have a lien upon the baggage or furniture of his patrons for rent, is held in the Colorado case of Scanlan v. La Coste, 149 Pac. 835, which is accompanied in L.R.A. 1915F, 664, by a note on the lien of one other than an innkeeper or boarding house keeper.

Landlord and tenant — condition dangerous to public — liability. A lessee of an amusement park, who has covenanted to keep a walk open as a thoroughfare, and who sublets the property exacting a similar covenant from the sublessee, with a condition existing dangerous to the public which will use the walk, of which he knows or might know by reasonable inspection, is held liable for injury to a patron by reason of such condition, in Junkermann v. Jankelson, 213 N. Y. 404, 108 N. E. 190, L.R.A.1915F, 700.

Master and servant — blasting — assumption of risk of unexploded charges. A mine owner who employs experienced miners in shifts to sink a shaft so small that the explosions of dynamite in the drill holes cannot be counted is held in Conradsen v. Osceola Consol. Min. Co. 180 Mich. 155, 146 N. W. 638, L.R.A.1915F, 578, to owe no duty to an incoming shift to discover and notify them that unexploded charges have been left by their predecessors, since it is the duty of the miners to ascertain for themselves whether or not all charges have exploded, and they assume the risk of injury from charges which have not exploded.

Master and servant — duty to keep safe roof of tunnel. A master, it is held in Regan v. Parker Washington Co. 123 C. C. A. 648, 205 Fed. 692, L.R.A.1915F, 810, must use reasonable care to keep the roof of a tunnel which servants are engaged in constructing reasonably safe for the men to work under, although the condition changes as the work progresses, and he cannot relieve himself from liability by delegating this duty to employees.

Master and servant — fall over foot scraper — liability. A master, it is held not liable in McGinnis v. Hydraulic Press Brick Co. 261 Mo. 287, 169 S. W. 30, L.R.A.1915F, 583, for injury to a servant who, in full daylight, trips over a foot scraper set adjacent to the steps leading into the master's office, to which the servant is required to resort from time to time in connection with the performance of his duties.

Master and servant — failure to light bridge over railroad — negligence. A railroad company is held not chargeable with negligence in the New Jersey case of Raub v. Lehigh Valley R. Co. 94 Atl. 567, L.R.A.1915F, 838, as regards brakemen on its freight trains, in failing to illuminate at night a low bridge over its tracks, in the absence of any proof that such a provision was customary in railroad practice.

Master and servant — fault of minor — effect. Where an employer places a minor at work with defective or dangerous machinery, the dangers and risks of which employment the minor does not appreciate, and through a fault or error of his own sustains an injury while working at such machinery, the employer is held liable in damages therefor in the Florida case of Coons v. Pritchard, 68 So. 225, L.R.A.1915F, 558, if the fault of which the minor was guilty was such an act of commission or omission under the circumstances as the employer might reasonably have anticipated from a youth of the average intelligence.

Master and servant — liability of storekeeper for abuse of customer by clerk. That a corporate storekeeper is not liable to a customer for abusive language applied to him by a clerk because of personal offense at a remark made by the customer about the clerk, is held in the Alabama case of Republic Iron & Steel Co. v. Self, 68 So. 328, annotated in L.R.A.1915F, 516.

Master and servant — notice of injury — Federal employers' liability act. A contract between master and servant requiring the latter to give the former notice of injuries within a specified time after they occur is held not applicable to injuries within the operation of the Federal employers' liability act in the Arkansas case of Chicago, R. I. & P. R. Co. v. Pearce, 175 S. W. 1160, L.R.A.1915F, 551.

Mortgage — assignment — cancelation — priority. Where a duly recorded mortgage is given to secure the payment of a negotiable note, and for full consideration the note and mortgage are assigned before the maturity of the note, and the record of the mortgage is unauthorizedly canceled, and a second negotiable note and a mortgage on the same property to secure the note are executed and are assigned for value before the maturity of the note, but after the cancelation of the record of the first mortgage, the assignee of the later note and mortgage is held to have no priority over the assignee of the first note and

mortgage, in the Florida case of Northrup v. Reese, 67 So. 136, accompanied by recent cases in L.R.A.1915F, 554, the earlier decisions having been presented in 15 L.R.A.(N.S.) 1025.

Municipal corporation — fixing stands for hotel buses — discrimination — validity. A municipal corporation, it is held in City Cab, Carriage & Transfer Co. v. Hayden, 73 Wash. 24, 131 Pac. 472, Ann. Cas. 1914D, 731, annotated in L.R.A.1915F, 726, may assign stands to the omnibuses of the various hotels soliciting business from travelers arriving at a railroad station, and require the solicitors and vehicles to remain within the stands assigned, although some are much more advantageous than others, so that the hotels receiving the more favorable assignments have a material advantage over others.

Municipal corporation — merry-go-round in street — injury — liability. A city has no right to permit its streets to be occupied by a merry-go-round, guy ropes, cable, engine, tank, fuel, and a baby rack, and such obstructions, it is held in Malchow v. Leoti, 95 Kan. 787, 149 Pac. 687, annotated in L.R.A.1915F, 568, constitute a public nuisance, rendering the city liable to a person injured thereby, unless so careless as to be held responsible himself for such injury.

Municipal corporations — power — delegation. A charter provision empowering a municipal corporation to grant, refuse, or revoke licenses to the owners of vehicles kept for hire therein, and to subject them to such regulations as the interest and convenience of the inhabitants thereof, in the opinion of the municipal authorities, may require, is held in the West Virginia case of Dickey v. Davis, P. U. R. 1915E, 93, 85 S. E. 781, to delegate to the corporation full legislative power over such vehicles. Under such authority the corporation has power to prescribe the routes and hours of service of motor vehicles commonly called "jitney buses," carrying passengers along the streets, and taking in and discharging them in a manner similar to that in which they are received and discharged by street cars, and to require from them indemnity against injury to persons and property occasioned by the operation thereof. A note on the regulation of jitney buses is appended to the foregoing decision in L.R.A.1915F, 848.

Negligence — injury to child — peculation from tool box. That a normal ten-year-old boy who takes dynamite caps from a contractor's tool box, which is open in a public highway, cannot hold the contractor liable for an injury caused by the explosion of a cap, although he might have been negligent in leaving them so exposed, because the boy himself is a trespasser, is determined in the California case of Nicolosi v. Clark, 147 Pac. 971, L.R.A.1915F, 638.

Negligence — material blown from building — injury — act of God. The owner of a building is held in the Montana case of Holter Hardware Co. v. Western Mortg. & Warranty Title Co. 149 Pac. 489, L.R.A.1915F, 835, not relieved from liability for injury to adjoining property by loose material negligently left on the top of it, by the fact that the material was blown against the adjoining building by the wind, which was not so unusual in violence that it should not have been anticipated.

Negligence — storekeeper — swinging door. A storekeeper is held not liable in Smith v. Johnson, 219 Mass. 142, 106 N. E. 604, annotated in L.R.A. 1915F, 572, for injury to a customer whose hand is caught between an ordinary swinging door which is maintained without keepers at the store entrance, and its frame, when it is released by a preceding customer, whether the injury is caused simply by the recoil of the door, or its return is hastened by another person coming through from the opposite direction.

Negligence — use of swimming pool — knowledge of danger. One familiar with a swimming pool, who attempts to dive into it when it is only half full, and he can observe from the relation of the depth of the water to persons standing in it, that it is not safe to dive into it,

is negligent, and it is held in the Oregon case of Johnson v. Hot Springs Land & Improv. Co. 148 Pac. 1137, that the proprietor of the pool is not liable for his death resulting therefrom, although a diving board was provided for the use of patrons, and no special warning of the danger was given at the time of the accident. Supplemental annotation on the liability for safety of patrons of one maintaining a place of amusement to which the public are invited is appended to the foregoing case in L.R.A.1915F, 689.

Pardon — conditions — validity. The governor of the state is held to have the power in Ex parte Horne, — Okla. Crim. Rep. —, 148 Pac. 825, L.R.A. 1915F, 548, to annex to a pardon or parole any condition precedent or subsequent, provided it be not illegal, immoral, or impossible to be performed.

Pardon — limiting power to governor. The recommendation of a board of pardons, it is held in Laird v. Sims, 16 Ariz. 521, 147 Pac. 738, may be made a requisite to a pardon by the governor under a constitutional provision that the governor shall have power to grant pardons upon such conditions and with such restrictions and limitations as may be provided by law. The cases treating of the constitutionality of restrictions upon a governor's pardoning power are appended to the report of the foregoing case in L.R.A. 1915F, 519.

Pardon — parole — revocation. A parole granted by the district court or a judge thereof under § 2 of chapter 178 of the Laws of 1907 (Gen. Stat. 1909, § 2460), containing a provision that, upon satisfactory information that the conditions of the parole have been violated, the court or judge is authorized to revoke the parole and cause the convict to be reimprisoned under the sentence pronounced by the court, without notice or hearing, it is held in Ex parte Patterson, 94 Kan. 439, 146 Pac. 1009, annotated in L.R.A.1915F, 541, may be revoked by the court or judge, and the convict may be recommitted to serve out his sentence without either notice or hearing; and such action is not a violation of the constitutional guaranty that no person shall be deprived of his liberty without due process of law, nor of the other guaranty that no warrant shall issue except on probable cause, supported by oath or affirmation.

Parent and child — child's negligent management of automobile — liability of parent. A mother accepted the invitation of her son to ride in his automobile merely as his guest; and, as she had no control and took no part in the management of the automobile, she is held not responsible in Anthony v. Kiefner, 96 Kan. 194, 150 Pac. 524, L.R.A.1915F, 876, for injuries inflicted upon another by the negligence of her son in driving the automobile.

Parole — remand of convict. A convict was granted and accepted a parole which expressly provided that the governor might revoke the same and remand the party to prison for a violation of the conditions, or "for any other reason by him deemed sufficient." It is held in Ex parte Horine, — Okla. Crim. Rep. —, 148 Pac. 825, L.R.A.1915F, 548, that the governor may order the convict to be so remanded without notice to him, and without giving him an opportunity to be heard.

Principal and agent — authority of agent — representations as to fixtures. The power of an agent, employed to sell real property, to bind his principal as to fixtures, was considered for the first time in O'Daniel v. Streeby, 77 Wash. 414, 137 Pac. 1025, L.R.A.1915F, 634, which holds that an agent to negotiate the sale of real estate has authority to bind his principal by representation that a refrigerator, shelving, screens, and lumber which had in fact been placed on the property by a tenant, and were removable by him, belong to the property, so as to charge the principal in damages for the misrepresentation.

Principal and agent — deed by attorney in fact — validity. Title passes, it is held, in the Colorado case of Bennett v. Laws, 149 Pac. 439, L.R.A.1915F,

662, by a deed executed by an attorney in fact in his own name, without reference to his principal or his power of attorney, if the power is unlimited in its scope and is for the use and benefit of the attorney. Probably we are to understand the decision to mean that the court considers that the power of attorney in question, by reason of the provisions in it for the benefit of the donee, was to be classed among power, "to dispose of uses," as distinguished from powers of attorney in general, and that the rules for its execution were to be those pertaining to the first class, instead of those pertaining to the second.

Sale — offer — statement of price. That the mere statement of the price at which property is held cannot be understood as an offer to sell, is held in the Nebraska case of Harsh v. Nebraska Seed Co. 152 N. W. 310, annotated in L.R.A.1915F, 824.

School — failure to take contractor's bond — liability to materialman. Failure of a school district to comply with a statutory provision that any person contracting to construct a building for a school district shall be required to give bond obligating him to pay for the labor and materials furnished for the work is held in the Oregon case of Northwest Steel Co. v. School Dist. 148 Pac. 1134, annotated in L.R.A.1915F, 629, to render it liable for the amount which a materialman is unable to collect from the contractor because of his insolvency.

Sunday — letting horse — recovery for injury. That the letting of a horse for a pleasure drive on Sunday is contrary to the terms of the statute is held in Hinkle v. Pruitt, 151 Ky. 34, 151 S. W. 43, not to preclude recovery for injury to the horse by excessive driving. The cases on liability for damage to or conversion of property leased or hired in violation of Sunday law, are gathered in the note accompanying the foregoing decision in L.R.A.1915F, 644.

Will — rejection as to property in other state. A man who accepts the provisions of his wife's will, as to property in the state of her domicil, which are more favorable to him than the provisions of the statute, will not, it is held in the Missouri case of Lindsley v. Patterson, 177 S. W. 826, be permitted by the courts of another state to renounce those provisions of the will dealing with property in that state, which are not as favorable as the provisions of its statute. Supplementary annotation on the conflict of laws as to election to take under or against a will accompanies the foregoing decision in L.R.A.1915F, 680.

Witness — presiding judge. That a trial judge of a court of record, before whom a cause is tried with a jury, cannot testify for one of the parties thereto, over the objection of the other, as to a material point at issue, is held in the Oklahoma case of Powers v. Cook, 149 Pac. 1121; and where, when the cause is called for trial, the plaintiff presents a proper application requesting him to disqualify on account of the fact that he will be used by the defendant as a witness on a material point at issue, which motion is overruled, and he then tries the case and testifies for the defendant on a material point at issue, his action in overruling said application is prejudicial error and fundamentally wrong. Recent cases on the competency of a judge as a witness in a cause or trial before him are appended to the foregoing decision in L.R.A.1915F, 766, the earlier adjudications having been presented in 31 L.R.A. 465.

Recent English and Canadian Decisions

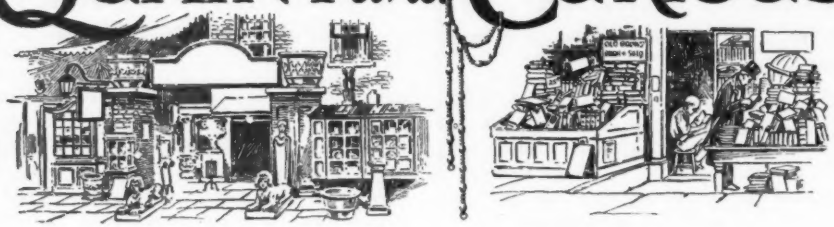
[Note.—The more important of these decisions will be reported, with full annotations, in British Ruling Cases.]

Insurance against capture — vessel putting into neutral port to avoid capture — insurer's liability. The courts steadfastly refuse to construe policies of marine insurance against the perils of "men of war . . . enemies . . . takings at sea, arrests, restraints, and detainments of all kings, princes and people of what nation, condition or quality soever" as extending to the breaking up of the voyage through mere apprehension of capture, however well founded, unless such capture was imminent. Accordingly it is held in Becker, G. & Co. v. London Assur. Corp. [1915] 3 K. B. 410, that where, upon the breaking out of war, a vessel enters a neutral port in order to avoid the risk of capture and with the intention of suspending the further prosecution of the voyage until after the termination of the war, the owners of cargo insured cannot give notice of abandonment and claim as for a constructive total loss, the peril insured against not having, at the time of the breaking up of the voyage, actually commenced to operate.

Master and servant — liability of one knowingly employing another who has broken contract of service. It is not often that an employer who has lost the services of an employee through the latter's breach of contract brings action against one who thereafter employs him. That there is a right of action in such case against one employing the servant with knowledge that he has broken his contract, is established by a series of decisions beginning with Blake v. Lanyon (1795) 6 T. R. 221, and ending with Fred. Wilkins & Bros. v. Weaver [1915] 2 Ch. 322.

Warehousemen — limitation of amount of liability — liability where lock of receptacle is deliberately forced. A provision in a warehouse receipt limiting the amount of liability for any one piece or package and its contents to a certain sum unless the value thereof is disclosed and an additional charge paid to cover the additional risk, is held in McGale v. Security Storage Co. 25 Manitoba L. Rep. 533, 22 D. L. R. 57, not to apply where the contents of a chiffonier were lost in consequence of the unauthorized act of the warehouseman in forcing open locked drawer and taking charge of their contents.

QUAINT and CURIOUS



Man in sooth is a marvelous, vain, fickle and unstable subject.—Montaigne.

A Cool Proposition. A Chicago attorney, representing a client whose title to a cold storage plant was in question, closed his argument before the court with the following bit of pathos:

"Your Honor, there is more resting on your decision than this cold storage plant; a human life is at stake. My client's life's efforts are in this cold storage; his life blood is in this cold storage; his body and soul are wrapped up in this cold storage."

Would Not Tempt Providence. Many years ago a trial was in progress in San Francisco, and counsel for defendant was cross-examining a witness for plaintiff. An earthquake shook the chandeliers and dislodged a portion of the ceiling. Jurors, witnesses, and spectators started for the door, but the judge checked the exodus of the lawyers by retaining his seat and his composure, and exclaiming "Gentlemen, gentlemen, *fiat justitia ruat* ceiling." The seismic disturbance being over the crowd returned.

"You can proceed with the cross-examination of the witness," said the judge to the counsel for the defendant. "Pardon me, your Honor," was the reply, "but after the late exhibition of the displeasure of the Almighty at the lies this witness was telling, I do not care to further invoke Divine wrath. I will ask him no more questions."

Great Combination. In making up a default judgment the other day in Salt Lake City, a curious bit of irony was unearthed in the complaint. The complaint was filed through a collection agency in the name of a local physician. The first cause of action alleged money due the physician for professional services. The second cause of action was an assigned account, alleging that the defendant had failed to pay for "services rendered and materials furnished" by a local undertaking company.

The Letter That Never Came. A very fervid if misplaced belief in human nature is shown by a woman in Mississippi who inserts an ad in a local paper, asking the person who hit her cow, on the state highway with his automobile, about 7 miles out of Vicksburg, to write her, as the cow is badly injured.

Ben Abdul and His Three Wives. The following amusing letter addressed to the New York World recently appeared in its columns:

I kindly beg to offer you my insignify suggestions for protests concerning the untruthful liberty of this country. It is so. About fifteen years past, when I was energetic and young, I hear about the great country of London, Liverpool and New York and United States. So I leave my three wives in Bagdad, on the Tigris, and come to London with Mr. Daly, great sciencetific man. I come to London, work hard five years; then Liverpool, one year; New York and Chicago stockyard, three years, until I do prosperous work with chickens and eggs in Petaluma, Cal.

Then I went to bring my three wifes here. My lawyer say police put me in jail when my wifes come. So I want to go to Bagdad myself. They tell me that

the police put me in jail in London because this country fight the Turk and I am Turk subject.

Is this freedom of liberty? I ask for question. When I see statu of liberty I say it is very great, but not truthful. So you can see for yourself.

Hoping this insignify suggestion will strike you, I am, sir, your obedient servant, Sheikh Selim Ben Abdul.

A Sharp Rebuke. A woman lawyer in San Francisco made an argument in court that enraged her opponent. When he came to reply he lost his temper. "A woman," said he, "ought to be in better business than wrangling in Court with men. She had better be at home raising babies."

"A woman," she rejoined, "had better be in any business than raising babies, to become such men as this creature."

A Happy Compromise. A pioneer lawyer of Helena, Montana, relates the following anecdote about himself and another prominent attorney. They were on opposing sides of a case in which a lot had been jumped. In those days, laying two logs across a lot would hold it for ten days. Matters of all sorts were argued for an entire day. He says both the attorneys quoted from memory from the statutes, and he is afraid that many of the quotations were imaginary. At 6 o'clock the court adjourned for supper. Court, attorneys, and clients went to the saloon across the street, and, after a little treating, all became more mellow, and it was finally proposed that the lot be put up at auction and sold to the highest bidder, the proceeds to be divided between the two attorneys. This being satisfactory to the attorneys, the proceedings were carried out, and the lot sold for $75, of which each received half.

Camped on the Trail of the Serpent, Perhaps. Efforts made to locate the descendants to learn what finally became of Private Adam N. Eve, United States Marine Corps, who deserted January 13, 1811, from the command of Captain Anthony Gale at Philadelphia, Pennsylvania, have so far been unavailing.

"Probably beat it back to the Garden of Eden," facetiously wrote an Ohio Eve.

"Still raising Cain somewhere, no doubt," replied a member of the Texas branch, who also disclaimed kinship with the original Adam.

"Growing apples in Oregon. I know him well," was the response from another Eve, who was probably mistaken.

And now the government agents directing the search are of the opinion that certain points in the interrupted military career of Private Adam N. Eve, United States Marine Corps, must remain forever cloaked in mystery.

Frank Admission. An ancient record in the State of North Carolina discloses the following unusual document:

William Jones to Public } Notice to the Public.

That I the subscriber, William Jones, do hereby acknowledge myself a public liar, that I have said and told un-necessary lies on Jesse Northington and his family and says that I am sorry for the same.

This the 5th day of January, 1822.

Attest Zachariah Cofield.

(Signed) William Jones.

North Carolina } January Term,
—— County } Superior Court, 1822.

The above Notice was proven in open Court by Zachariah Cofield and admitted to be registered.

Test: Jno. Armstrong, Clerk.

Knew Women's Weakness. During the reign of Louis XV. of France the light chaise came into fashion, and great ladies of Paris were accustomed to drive in them about the city. But beautiful hands are not always strong ones; accidents began to occur more and more frequently in the streets. Consequently, says Das Buch für Alle, the King besought the Minister of Police to do something, since the lives of pedestrians were constantly in danger.

"I will do whatever is in my power," replied the police minister. "Your Majesty desires that these accident cease entirely?"

The King replied, "Certainly."

The next day there appeared a royal ordinance that ordered in the future ladies under thirty years of age should not drive chaises through the streets of Paris. That seems a mild restriction; but it is said that scarcely a woman from that time on drove her own chaise. The police minister knew that few women would care to advertise the fact that they were over thirty, and that the rest would probably be too old to drive, anyway.—Youth's Companion.

A Venerable Case. In the case of J. S. Detrick by Davis & Warren vs. H. F. Forkert by Knopp & Coyne, a judgment was recently rendered in La Moure County, North Dakota, in favor of the plaintiff for $218.01. This case was known as the "Blind Horse Case." The plaintiff sued on a check on which payment had been stopped, and defendant Forkert claimed that the horse, in payment of which the check was given, was not as sound as warranted to be. The importance of this famous case will be noted from the following preliminary remarks made by Judge Lynch in his charge to the jury.

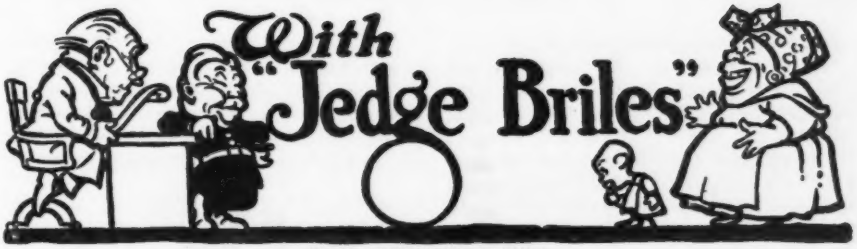
"Gentlemen of the Jury:

"You have the unique privilege of sitting upon one of those rare and uncommon cases, where subject-matter, litigants, the counsel, and the court have all materially changed under the ruthless administration of Father Time. Nothing is as it was. The horse has grown from colthood to an aged animal. Counsel have died, new counsel substituted, and the personnel of the court has thrice changed. Defying lawyers and courts and time in the decade, it still remains serenely at the masthead of the calendar of this court, where it has headed litigation for successive terms since the very beginning of the court. Proudly heading the calendar at every term, it has each time stepped aside and witnessed the slaughter of its companions. And this court, as now constituted, is loath to see it go, because it has been a comfort to it for nearly seven years. But as it has led over sixteen hundred cases in its short career, its age probably exempts it from longer leadership, and the court will no doubt be compelled to look for another leader. Now, gentlemen, those reflections are not intended in any manner as any indication of the court's opinion as to the blameworthiness of either party as a cause of many delays and continuances. Both parties have been equally to blame, and with them counsel and court. Sickness and absence of parties and counsel have prevented the case from going to trial, and no bad faith is laid at the door of either party for the delays occasioned. The old case has been ever faithful and loyal to this court, and it cannot see it go without paying it some tribute for its loyalty. Issues of fact that stick together for more than ten years, gentlemen, are no common issues, and this case is worthy of your deepest consideration."—The La Moure County (N. D.) Chronicle.

Made Pet of Snakes. Zephany Osteen of Preston, Kansas, got a divorce from Sarah Osteen because she had joined the Church of the True Followers, known by some as the "Snake Eaters," because of their belief that they could handle poisonous reptiles without harm to themselves.

Osteen said that often his wife would fondle her baby in one arm and a rattlesnake in the other arm at the same time. He said that while they lived on a claim several of the so-called prophets died from the effect of snake bites.

A brother was badly bitten, and once Mrs. Osteen incurred the enmity of his snakeship, and he set his poisonous fangs into her flesh. R. H. Brown, a minister of that church, swore that Mrs. Osteen handled large snakes often and when her children were in danger. He denounced her as a false prophet and explained to the court their belief.—The Sun.



BY W. LIVINGSTON LARNED

(Note.—Perhaps the most famous judge in the whole South presided in an Atlanta, Georgia, court, where dozens of cases came up daily. He was lovingly known as "Jedge Briles" by his ever-changing audience, and while it was his stern mission and duty to administer punishment, as well as justice, erring ones were devoted to him just the same. Judge Broyles' court is rich in stories, and it is from this picturesque source that a countless number of thoroughly authentic anecdotes have come. Judge Broyles is now a member of the court of appeals.)

A Case of Identification. "Is that the officer who arrested you?" His Honor inquired of Mose Hanibel, an old negro whitewash artist, arrested for assault.

"I can't rekkerlect," answered the prisoner.

"Sure, I arrested him, Judge," put in O'Flynn, with indignation, "he knows it, too."

"Take a good look at him Moses," insisted Judge Broyles, "isn't that face familar?"

The darkey squinted long and scowlingly at his accuser.

"Now dat I uses mo' keer, Jedge," he said, "'peers like dey is somethin' familyus erbout dat face, but dis yere worl' is so full ob nacherally ugly folks, jes' an ordinary man kaint always tell de diffunce betwix' 'em. Dat's him, Jedge, Dat's him . . . but be ez easy ez yo' kin on him, kaze he got a wife an' fo' chillun."

"She Dared Me To Come Back."

The Rule of a Higher Court. "Do you realize, John Hays, that you are guilty of contempt of court, sir, and that you may be sent to the chain gang for six months for refusing to go home quietly. I will permit you to join your family, if your court conduct shows you worthy of parole. Once again, . . . will you go directly home from here?" The judge was plainly indignant.

But Hays merely shivered and stubbornly shook his head, "No, Sir."

"Am I to understand you prefer jail to home?" His Honor demanded. "Have you no conscience?"

"It ain't my conscience, judge," Hays replied sadly, "it's my mother-in-law. She dared me to come back."

A Witness for the Defense. "Judge," said the prisoner with the two black

"That Big Guy is a Witness."

eyes, "I'm in tollable bad condition to do much explaining, so I got a witness to speak fer me about this matter. Can he give evidence, your Honor?"

Judge Broyles glanced first at the prisoner, and then at the two-hundred pound Irishman, seated on a nearby bench. The prisoner's eyes were black and blue.

"What does this man know of the case?" the judge demanded, "you are accused of resisting an officer. McLynn was compelled to knock you down before you submitted to arrest."

"Well, . . . it was like this, judge," replied the prisoner, "it makes some difference whether a man has a *reason* to fight or not, don't it?"

"Most assuredly," said the judge.

"Persactly, your Honor. I bet a friend that big Irish loafer of a cop couldn't take me to the station house, and that big guy there is a witness to prove that me and Lynn had th' bet."

The Very Inquisitive Law. The clumsy, big-handed man seemed hopeless and helpless as he stood awkwardly before "Judge Briles."

"This man has been ordered into court by J. K. Wilson, of Greenwood avenue," explained the policeman, "it seems he ruint an ortermobile."

Wilson was questioned, and put matters in a clearer light. Something had gone wrong with his runabout. The prisoner took the machine in hand, and guaranteed to mend it. When Wilson finally came for the runabout, it would not run at all, and the expert, who later examined the wreck, testified that Wilson's workmanship was incompetent to a degree.

"What did you do to the car?" the judge inquired.

"I been fix it," said the prisoner.

"What did you fix?"

"I been fix tha carberater."

"Do you know what a carburator is, my man?"

"Yah—yah—I know. But I don't quite get him back tha same when I tak' him in parts."

His Honor Was in Error. Mose Ham was arrested for "loud and uproarious language" and "disturbing the peace." Judge Briles read the document in the case, and then turned to the black-as-ebony prisoner.

"Mose Ham," said he, "You are charged with shouting, groaning, crying aloud in the night, lamentations, profane language, cursing, swearing, breaking the peace, and general noisy conduct not befitting a citizen. What have you to say?"

"I Done Had a Visitation."

"Des dis, Jedge, dey ain't no spec er dat de truf . . . all I had wuz er slight visitation ob religion . . . ef I talked loud, jedge, hit wuz becauz I'm further away from th' Lawd dan mos' folks."

Making It Easy for the Court. Ephraim Jones was charged with stealing a dozen and a half jars of peach jelly from Mrs. Watson's cellar.

He stood in humble silence while the arresting officer and the judge discussed the demerits of the case.

"He did it all right, your Honor," said the policeman. "I was watching him when his head peeped thru the door. His arms were filled with jars."

"Yes," commented Judge Briles, "From all I can understand, this prisoner deliberately broke into that cellar, waited until he thought the coast was clear, and then grabbed up as much as he could carry. Ethically, it is apparent, moreover, that—"

The negro broke in at this juncture.

"Pawdon me, Jedge," he declared, "but whut's de use en yo' folks wastin' all er dis yere legalish talk. I'se done made up mah mind ter say I done hit enyhow."

Summing Up for the Defense. A colored woman had been brought to court for allowing her five boys to bathe naked in a stream, said stream running near a populated district.

The white neighbors complained.

"Mammy Lou," reprimanded the judge, "you know you shouldn't allow those pickanninies to wash in that pond with their clothes off. People don't want to see such sights."

Bathed Naked in a Stream.

"Don't want to, Jedge, don't want to!" cried the irate mammy, "Lawd sakes, Yo' Honor, dey des fights and fits fo' ter git frunt seats in de winders."

His One Plea for Justice. "Mark Fenderson—stand up!"

"Yes, judge."

"You are accused of a very serious offense."

"How's that, judge!"

"Officer Pettingill says he caught you tying a sheet over your wife's face. She has entered a complaint of assault against you."

"Yes, judge."

"Then you admit it?"

"Yes, judge . . . I was tying that sheet over her mouth."

Tying A Sheet on Wifies Face.

"Fenderson, I've been looking up your record. You are not a good provider; you are not a temperance advocate; you are not a steady worker; you are not amiable as to disposition; and you are not tidy in your personal appearance. Have you anything to recommend you as a good husband?"

"Well, you Honor, I'm willin' to live with th' lady, an' I wuz th' only man out uv three hundred in a sawmill town to even want to try. Seems like you ought to take that into consideration."

A Few Tearful Affidavits. Mammy Lou had been in tears ever since her arrest and detention in court. Nor could any of the attendants console her.

When Officer Mark Davis brought her in from the waiting room, she was still sobbing as if her heart would break. Mammy's arrest had been caused by a domineering neighbor, who alleged that the old colored lady insisted upon drying each week's wash on a portion of fence that didn't belong to her Decatur street estate.

Officer Davis Brought Her in.

"Mammy," began the judge, "Are you guilty of this charge?"

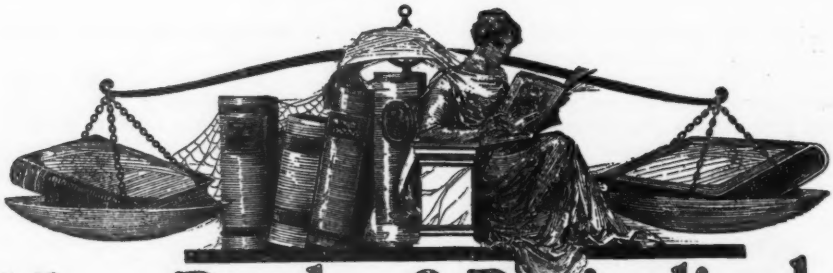
"I didn't mean no harm, jedge."

"That is beside the point, Mammy Lou. Did you, or did you not, hang clothes on this lady's front fence. I must be strict in the matter. Remember you are in court."

But Mammy began to cry all over again.

"What in the world is the matter with you?" exclaimed His Honor.

Between sobs, Mammy Lou managed to blurt out:—"I wuz des thinkin' jedge, uv how pow'ful mean yo' is now, an de way yo' wuz about thutty years back, when I wuz nursin' yo. Laws, yo Honah, yo' suttenly wuz de meanes white chile in de county, but none uv us ebber knowed yo' was gwinter be no jedge."



New Books & Periodicals

The fountain of wisdom flows through books.—Greek Proverb.

"The Art of Collecting." By R. J. Cassell. (Ronald Press Co., 20 Vesey St., New York.) 260 pages. $2 postpaid.

This is a work for the collection manager and the business man. It is a carefully prepared statement of the underlying principles and practices of collecting, with suggestions, forms of reports, letters, etc. It contains the results of the author's experience during many years of practical collecting, and presents not mere theories, but actual working plans,—plans which have achieved success.

A series of chapters is devoted to the subject of collection letters, while treatment of such subjects as "A Study of Debtors," "Legal Phases of Collecting," and "Unusual Collection Methods," make the work of value to anyone interested in the collection of accounts.

"Inventions and Patents." By Philip E. Edelman. (D. Van Nostrand Co., New York.) $1.50 net.

This volume is of interest to all persons concerned with patents, either as inventors, investors, or manufacturers. The author believes that the patent system is misunderstood, or at least incompletely understood, by the very persons who are the most vitally concerned. He has treated his subject in everyday terms, with the aim of making his treatise an inventor's book,—helpful to all of that class, whether they are technically trained or not.

Many useful cases are cited in the chapter on patentability and practicability, as well as in the appendix, which consists of digests of important decisions, besides forms.

It is not the intention of the book to make the inventor his own attorney, nor is the work presented as a law book. But it is the result of a close study of patent matters, and embraces the experiences of many inventors and patentees. It contains much information not elsewhere available.

"The Monroe Doctrine." By Albert Bushnell Hart, Ph. D., Litt. D., LL.D. (Little, Brown & Co., Boston.) $1.75 net.

Professor Hart has presented in this volume an interpretation of the Monroe Doctrine. This complex topic, which has been prominently discussed, stated, and revised for nearly a century, has of late years received a wider application. This fact has resulted in an increase of public interest in the subject.

The author regards the Monroe Doctrine, not as a question of theory, but as a fact founded on the conditions of things in the Western Hemisphere. He treats successively of the original Monroe Doctrine and its variations; of the American doctrine, present world conditions, and the permanence and maintenance of the Monroe Doctrine.

The subject is discussed without reference to parties or internal politics. The work discloses what the Monroe Doctrine has meant from time to time; what it actually means to-day; and what the difficulties are in the way of making it work in the present disturbed international situation.

The Monroe Doctrine is viewed by Professor Hart as a formula which expresses a fact, and not a policy,—a fact inherent in the political geography of the Americans and in the modern conditions of warfare. If we are not prepared to defend our interests, even though they seem at first to be only indirectly affected, the Monroe Doctrine is dead. If we are willing to go to that limit, it must be proved by intelligent preparation.

"The Stoic Philosophy." By Gilbert Murray, LL.D., D. Litt. (G. P. Putnam's Sons, New York.) 75 cts.

Professor Murray gives an account of the greatest system of organized thought that the mind of man had built up for itself in the Græco-Roman world before the coming of Christianity. Stoicism, according to Professor Murray, "represents a way of looking at the world and the practical problems of life, which possesses still a permanent interest for the human race, and a permanent power of inspiration."

This little volume discloses the spirit of Stoicism in its full force and moral beauty.

The author's sympathetic and brilliant interpretation should appeal to the entire public of readers whose thoughts turn to the ethical significance of life.

"Official Index to State Legislation." Vol. 1, 1915. (Law Reporting Co., New York.)

This is a cumulative numerical and subject index, and a complete record of all bills of general or public interest introduced in all state legislatures. Private and local bills are not classified. The arrangement is first by subjects alphabetically; secondly, under each subject by states alphabetically; thirdly, under each state, the Senate first and then the House; and fourthly, under each House, the bills first and then the resolutions, numerically, by introduction numbers.

The entry for each bill and resolution gives (1) the bill number, (2) the date of introduction, (3) the name of the member introducing the bill, (4) the subject, (5) the effect of the proposed legislation or the "short title of the bill," and (6) the position or status of the bill, on the date shown at the head of the column.

This work, the reference value of which is highly apparent, is compiled under the direction of the Joint Committee on National Legislative Information Service of the National Association of State Libraries and American Association Law Libraries.

"Schouler on Wills." 1 vol. (Students' Edition). $4.50.

"Winslow's Forms of Pleading and Prac- 3 vols. new ed. $19.50.

Recent Articles of Interest to Lawyers

Arbitration.

"Arbitration as a Term of International Law."—15 Columbia Law Review, 662.

Army and Navy.

"Felicitations — Preparedness."—The Fra, January 1916, p. 111.

"Naval Policy."—The North American Review, January 1916, p. 63.

Attorneys.

"After You Hang Out Your Shingle, or a Word of Advice to Beginners."—9 Maine Law Review, 41.

Automobiles.

"Liability of Owner for Negligence of Member of His Family in Operating Automobile."—81 Central Law Journal, 382.

Banks.

"Clearing Houses—Liability of Member Banks for Banks for Which They Clear."—3 Virginia Law Review, 106.

Bonds.

"Guaranty by One Railroad Company of the Bonds of Another."—81 Central Law Journal, 400.

China.

"The Neutrality of China."—25 Yale Law Journal, 122.

Constitutional Law.

"Constitutional Change without Revision."—The North American Review, January 1916, p. 75.

"Four Fugitive Cases from the Realm of American Constitutional Law."—49 American Law Review, 818.

"The Judicial Interpretation of the Confederate Constitution."—8 Lawyer and Banker, 387.

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"Backache or Disabled Back as an Uncertain Element in Suits for Damages."—81 Central Law Journal, 403.

Democracy.

"Democracy and Law."—49 American Law Review, 801.

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"Changes in Equity Procedure in Maine."—9 Maine Law Review, 29.

"The Growth of the Equity Powers of the Maine Courts."—9 Maine Law Review, 1.

Evidence.

"Evidence of Good Character of Plaintiff in Action for Libel or Slander Where Not Assailed by Evidence or Plea of Justification."—81 Central Law Journal, 406.

"Professor Wigmore's Science of Judicial Proof."—81 Central Law Journal, 436.

"The Competency of Bloodhound Evidence."—81 Central Law Journal, 418.

Foreign Countries.

"Down the Amazon from Source to Mouth."—The Wide World Magazine, January 1916, p. 253.

Fraternities.

"The Phi Alpha Delta Convention."—8 Phi Alpha Delta Quarterly, 39.

Fraud.

"Intent to Defraud."—25 Yale Law Journal, 87.

Guaranty.

"Guaranty by One Railroad Company of the Bonds of Another."—81 Central Law Journal, 400.

Insurance.

"Everybody's Business" (Life Insurance). The Fra, January 1916, p. 130.

International Law.

"The United States and the Expansion of the Law Between Nations."—64 University of Pennsylvania Law Review, 113.

Intoxicating Liquors.
"Raiding the Moonshiners."—A Story.—The Wide World Magazine, January 1916, p. 246.
Judges.
"The Kentucy Judiciary."—4 Kentucky Law Journal, 3.
Law and Jurisprudence.
"Obedience to Law is Liberty."—9 Maine Law Review, 8.
"The Civil Law and the Common Law."—14 Michigan Law Review, 89.
"The Decline of Insular Jurisprudence."—81 Central Law Journal, 239.
Libel and Slander.
"The Libelous Will."—8 Lawyer and Banker, 410.
Liens.
"Lien of Livery Stable Keeper on Horses Used by Owner in His Business."—81 Central Law Journal, 387.
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"Qualified Martial Law, A Legislative Proposal."—14 Michigan Law Review, 102.
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"Important Constitutional Questions New in Form, Raised by the Texas Workmen's Compensation Act."—25 Yale Law Journal, 100.
"The Application of State Safety Statutes to Actions Under the Federal Employers' Liability Act."—15 Columbia Law Review, 649.
Monopoly.
"Price Control by Manufacturers."—19 Law Notes, 165.
Mortgages.
"Assignment of Mortgages Securing Negotiable Notes."—10 Illinois Law Review, 337.
Neutrality.
"The Neutrality of China."—25 Yale Law Journal, 122.
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"Taking Property of Insolvent Partnership to Pay the Individual Debts of the Partners."—81 Central Law Journal, 240.
"The Uniform Partnership Act."—29 Harvard Law Review, 158.
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"Penalties and Forfeitures."—29 Harvard Law Review, 117.
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"The Rule Against Perpetuities in Kentucky."—6 Kentucky Law Journal, 3.
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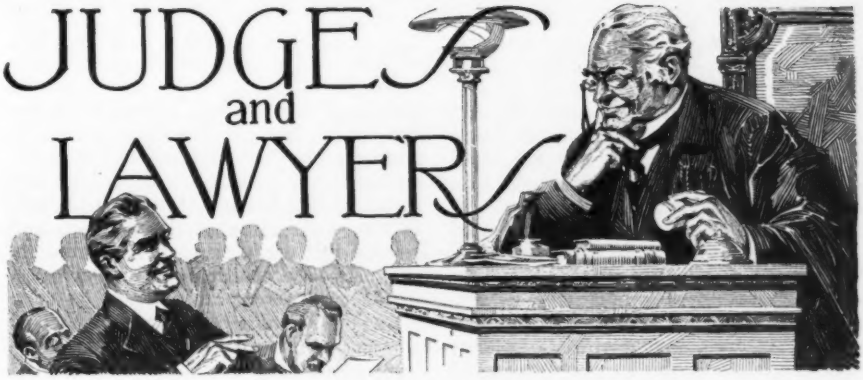
"Motion for Judgment on the Pleadings."—19 Law Notes, 189.
Postoffice.
"The Power of the States to Interfere with the Mails."—3 Virginia Law Review, 85.
Privacy.
"The Right of Privacy."—4 Kentucky Law Journal, 22.
Prohibition.
"Suffrage and Prohibition."—The North American Review, January 1916, p. 93.
Rates.
"The United States Supreme Court and Rate Regulation."—64 University of Pennsylvania Law Review, 151.
Real Property.
"The Rule in Shelley's Case in Pennsylvania."—64 University of Pennsylvania Law Review, 141.
Sales.
"The Conditional Sales Act."—10 Bench and Bar, 356.
Shipping.
"Seamen and the Merchant Marine."—The North American Review, January 1916, p. 25.
Telegraphs.
"Duties and Liabilities of Telegraph Companies in Regard to Messages."—9 Maine Law Review, 35.
Time.
"The Legal Status of Leap Year."—19 Law Notes, 187.
Wills.
"Wills of Soldiers and Sailors."—19 Law Notes, 185.
Woman Suffrage.
"Suffrage and Prohibition."—The North American Review, January 1916, p. 93.

Our Debt to the Pioneers

I love to think of the bold, adventurous men who blazed the pathway of civilization across the continent to the shores of the peaceful ocean. They, and not the politicians of this era, made this a world power. We owe them a debt of gratitude which we can never repay except by being model citizens. They had none of the ordinary incentives to high endeavor. They acted their parts in a rude age, upon an obscure stage, far from the teeming centers of population and publicity, with no Boswell to follow at their heels to record their words, with no newspaper correspondents to blazon their deeds. No trumpet of fame sounded in their ears, cheering them on in their onerous, hazardous, self-appointed task; but they wrought nobly for their country and their kind.—Hon. Champ Clark.



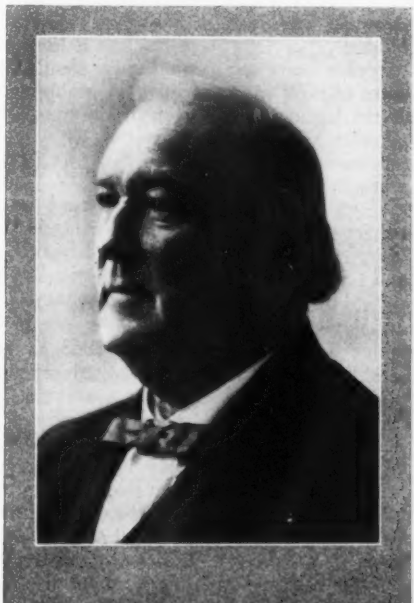
A Record of Bench and Bar

Mr. Justice Gibson A. Brown

BY HON. CHARLES M. THACKER

Associate Justice of the Supreme Court of Oklahoma

THE late Mr. Justice Brown, of the supreme court of the state of Oklahoma, was born on his father's farm in Washington county, near old Washington, the first capital of the Republic of Texas, on June 25, 1849, in the fourth year after the end of that short-lived Republic, and there grew to manhood. After a life of extraordinarily forceful activities, in Texas, until in 1904 and afterwards in Oklahoma, he died suddenly of an apoplectic stroke at his supreme court chambers in Oklahoma City, Oklahoma, on October 25, 1915, and was buried at Mangum, in Greer county, Oklahoma, where he resided after removing to this state in 1904. The stroke of apoplexy came while he was at work and in the apparent full enjoyment of his great intellectual powers. Both in his majestic stature and in his lofty and kindly and courageous intellectual endowments, his was a personality strikingly admirable and generally loved. He was six feet two and one half inches high, and, at his best, weighed nearly two hundred and fifty pounds, without appearing to have much, if any, surplus flesh. And in keeping with his powerful physique, he possessed a mind of great



strength and clearness of vision, and was immovably firm in his convictions. His early life was that of a sturdy farmer-boy, accustomed to the hard work and privations of such in that part of Texas in which he was reared, at that period of its history. In his nineteenth and twentieth years he rented lands adjoining his father's farm, and cultivated crops thereon that brought him the needed means to pay his way through a four years' course in Muse Institute, at McKinney, Texas, which he completed in two years. Immediately after this he commenced to study law in the office of Throckmorton & Brown, of Sherman, Texas, a firm composed of ex-Governor Throckmorton, and his uncle Thos. J. Brown, who was afterwards and until death only a few months before that of the subject of this sketch, chief justice of the supreme court of the state of Texas. In 1873 he was admitted to the bar of his native state, and at once became the junior member of his uncle's firm in the practice of law at Sherman. Early in 1882 he took up his residence at Clarendon, in Donley county, Texas, and in March of that year, when a county government was organized, he was elected the first county judge.

In the next following year, however, he resigned that office to engage in a lucrative practice of law throughout the big thirty-first judicial district of Texas, in which he lived, and whose wild and flower-starred prairies were then the domain of the cattle baron and cowboy. This district included the aforesaid Greer county, which, being without organized county government, was attached to Wheeler county, Texas, for judicial purposes. He was soon employed by the Cattlemen's Law & Order League to prosecute cattle theft; and his vigorous prosecutions brought good results in the betterment of conditions. Early in 1889 he was appointed by Governor L. S. Ross judge of the then newly created forty-sixth judicial district of Texas, including the aforesaid Greer county, which had become an organized county in 1886; and, being thrice successively elected to succeed himself, he continued in that office fourteen years, residing at Vernon, in Wilbarger county, Texas, during the time and until, in 1904, while he was holding court in Mangum, in the aforesaid Greer county, the Supreme Court of the United States had, on March 16, 1896, decided that the same was no part of the state of Texas, and it automatically became a part of the territory of Oklahoma. He went to Washington, and presented the petition, and represented the interest of the settlers in that county in procuring needed congressional enactments; and in 1904 he came to reside thenceforth at Mangum, in that county. Upon the admission of Oklahoma to statehood, on November 16, 1907, by virtue of an election in September, he became judge of the eighteenth judicial district of the new state of Oklahoma, in which position he was continued by a re-election in 1910, until he came to the bench of the supreme court following the election of November, 1914.

On July 18, 1875, he married Miss Adele Hart Davis, of Denton, Texas, who, with three sons and a daughter, survive him, and who contributed all that a good wife and mother with exceptional talents could contribute to the success and happiness of his life.

He was a man of plain and simple tastes and a hard worker. His life was spotlessly clean and upright. He enjoyed the unbounded confidence and esteem of the people who knew him.

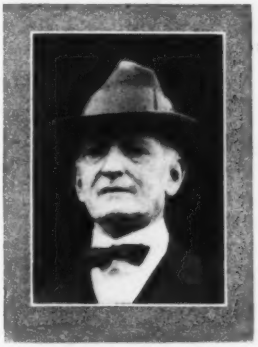
Death of Gen. Burnett.

Brig. Gen. Henry Lawrence Burnett, who prosecuted the plotters who killed Abraham Lincoln and who served two terms as United States District Attorney, died on January 3, at his home, in New York City.

From 1865 to 1872 General Burnett was engaged in law practice in Cincinnati with ex-Governor J. D. Cox. In 1872 he became the partner of E. W. Stoughton in New York City. Among his other partners were Benjamin H. Bristow, William Peet, W. S. Opdyke, and Edward B. Whitney. During his legal career, General Burnett was counsel for the Erie Railroad, and tried many noted cases, among them the Emma Mine cases, in which he was counsel for the English bondholders.

The Governor of Massachusetts

GOVERNOR Samuel W. McCall of Massachusetts, is the old type of American statesman. He ranks high, not only as a scholar, a thinker and a speaker, but also as a lawyer of the constructive type. A graduate of Dartmouth College, he has had a long and enlightened experience in practical American statecraft. While in college he won distinction and graduated second in his class. He studied law and was admitted to the bar, practising in Boston before going to Congress. His career in the Massachusetts legislature was a brilliant one. He became chairman of the judiciary in his third year, which is the position of floor leader. He secured while there the passage of the first corrupt practices act which ever passed any legislative body in America. He also secured the passage of the act which transferred the jurisdiction of cases against poor debtors to the regular court, the effect of which was practically to abolish imprisonment for debt in Massachusetts, in cases where the debtor was honest. His twenty years in Congress was a momentous period in American history. When he entered Congress the silver question was uppermost. He at once took an active part in the debate, and became one of the most earnest champions of the gold standard. His first important committee service was as chairman of the committee on elections, which tried numerous contested election cases, his fair and impartial treatment of which, in place of the partisanship which usually prevailed, being still remembered. Early in his congressional career he was chosen to a place on the judiciary committee, and finally to the ways and means committee, where he served for fourteen years.



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HON. S. W. McCALL

He early became a leader among the Republicans to urge a tariff revision downward, and during Roosevelt's second administration labored persistently to bring this about. The contest over the Porto Rican tariff was one of the most memorable in recent history, involving, as it did, the establishment of a colonial policy. Mr. McCall's minority report from the ways and means committee asserted that "Freedom follows the Flag," and he led the fight for free trade between all parts of American territory. He was prominent in the fight for reciprocity with Cuba, and he made the closing speech of the debate. President Taft selected him to introduce the Canadian reciprocity bill, and take charge of it in the House. But he staunchly opposed our assumption of a colonial policy in the Far East, claiming it was dangerous to the Monroe Doctrine and to our institutions. After annexation became a fixed fact, he favored the most liberal legislation for the Philippines, and advocated giving them free trade with America. He has taken a decided stand on many other important questions, and some of his speeches have been circulated by the millions of copies. He has contributed to many magazines, and wrote the Life of Thaddeus Stevens for the American Statesmen Series. In 1908 he was offered the presidency of Dartmouth College, but he concluded to stay in Congress. Both Dartmouth and Oberlin have conferred the LL.D. degree upon him. Mr. McCall completed his twenty years in Congress in 1912, declining a renomination. He was defeated for the senatorial nomination by John W. Weeks, after thirty ballots had been taken. A year ago he was Republican nominee for governor, and pushed Governor Walsh a close race. This year he was elected by 6,313 plurality.

Aristide Briand, the New Leader of France

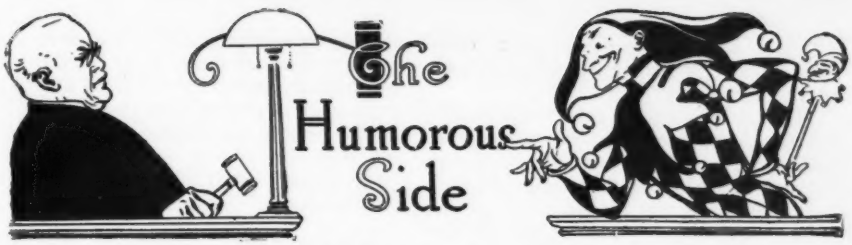
"BRIAND, the new Premier of France," writes George Marvin in the January World's Work, "is a lawyer, a Breton from Nantes. In public life he is comparatively a newcomer, his career being a matter of the last fifteen years or so, and this is a short public life compared to most of the French leaders. He began by being a lieutenant of Jean Jaurès in the Socialist Party and founded, with that tribute of the people, *L'Humanitie*, the Socialist organ. He entered the Deputies first in 1902, at the age of forty, representing then St. Etienne, a Socialist stronghold. He has always been a most liberal spirit, of supreme talent, impatient of political convention. It was his ardent belief in a free church and a free State which made him, in the name of the Chamber of Deputies, the reporter of the measure in 1906 which finally separated Church and State in France. Undoubtedly Briand is and has long been chief of all that representative part of political France which may be called the Centre. Beginning very radically and socialistically, he has constantly grown more balanced, less of a self-seeker, less of a partisan, until now he has achieved something of the clear statesmanship of a Venizelos. Indeed, without the strength of that Greek statesman, he is in a way the Venizelos of France."

Photo by Boston Photo News Co.

"But for Aristide Briand," states Charles Dawbarn in the New York American, "there would have been no separation, probably, between Church and State, bound together by the Concordat dating from Napoleon's time, and the result would have been perpetual irritation, for the spirit of union had departed, and it was fitting, therefore, that each should go his way. Come to office in times of great industrial unrest, the present Premier showed power in bridling labor in its most truculent mood.

"A general strike was threatened, and had begun with the railways. Then the postmen joined in, and for a week France was cut off from the rest of the world. The Premier broke the movement by calling up the railwaymen as reservists. The docility with which they responded showed their heart was not in the struggle; indeed, they were thankful to escape from their own agitators by obeying the voice of the master. No man has had a more romantic career than he. His family was so poor that his education was a matter of difficulty. He went to the bar and achieved success, but he scandalized his fellows by pleading for Gustave Herve, the famous anti-militarist of those days, but now one of the most sweetly reasonable of the Republican journalists (notwithstanding his fights with the Censor). Yet Briand was never anti-patriotic; he claimed merely that as an advocate he had the right to submit any thesis to the bench without necessarily committing himself to the view as his own opinion.

"Without losing anything of his passion for justice and his detestation of social wrongs, he has known how to adapt himself to the work of Minister of the Republic. 'I am a man of realizations,' he tells us, meaning that he prefers the half loaf to no bread, the practical policy of reform to the dream."



A little folly is desirable in him that will not be guilty of stupidity.—Montaigne.

A Careful Witness. Not long ago a man was charged at a country court with trespassing, and also with shooting some pigeons belonging to a farmer.

In giving his evidence the farmer was exceedingly careful, even nervous, and the lawyer for the defense endeavored to frighten him.

"Now," he remarked, sternly, "remember you're on oath! Are you prepared to swear that this man shot your pigeons?"

"I didn't say he did shoot 'em," was the reply. "I said I suspected him of doing it."

"Ah! Now you're coming to it. What made you suspect the man?"

"Well, first, I caught him on my land with a gun. Secondly, I'd heard a gun go off and had seen some pigeons fall. Thirdly, I found four of my pigeons in his pocket—and I don't think them birds flew into his pocket and committed suicide for the fun of the thing."—Chicago News.

A Categorical Answer. A certain judge, somewhat famed for the prolixity and subtlety of his reasoning, looked at a confused and bewildered witness, while his face took on the most benign expression as he endeavored to straighten out the question which had been propounded by counsel.

"Now, my good woman," he said, cheerfully and reassuringly, "you have only to answer in the fewest possible words these simple queries: Whether when you were crossing the street with the baby on your arm, and the stage was coming down on the right, and the cab on the left, and the brougham was trying to pass the stage, you saw the plaintiff between the brougham and the cab, or the brougham and the stage, whether he seemed in haste, and which one of the three cabs coming from the other direction he appeared to you to be hailing."

The now thoroughly bewildered witness wiped her spectacles, and meekly made answer:

"Yes, your Honor!"—Chicago News.

The Other Joshua. A traveling man who makes Indianapolis frequently also does considerable work in the mountain or moonshine district of Kentucky. On his last visit to this city he told the following story:

He was waiting for a train in a small town, and while walking about he wandered into a courtroom where an attaché of the United States commissioner's office was examining an aged negro who was said to have been making illicit whisky.

"What's your first name?" the official asked.

"Joshua, sah," responded the negro.

"Oh, you are the Joshua who made the sun stand still?" asked the commissioner, who was inclined to be facetious.

"No, sah," responded the defendant. "I'se de Joshua whut made de moon shine."

The traveling man does not say what disposition was made of the case.—Indianapolis News.

Justifying the Jury. "Guilty or not guilty?" asked the clerk.

"Yes!" replied the prisoner, emphatically.

Slowly the judge lifted his eyes from his desk, and fixed them witheringly upon the miscreant.

"Eh!" said his lordship, in a fearsome voice. "What do you mean by such an answer as that?"

"This chap with the face," replied the prisoner, pointing towards the clerk, "asked me whether I was guilty or not guilty, and I said 'Yes.' And it's true. I can't help being one or the other."

"But which are you?" inquired the judge.

"My lord," said the wicked culprit, "if I answered that, what use would you have for the jury?"

And the villian looked around him with an air of innocent injury, while the judge tried to explain to the jury what he meant.—Tit-Bits.

'Pon Honor. Puns do not, as a rule, bear transplantation from one language to another, and there would never arise, one may guess, any loud outcry for a protective tariff to keep German-made puns out of America. However, here is a German story the point of which is a pun which remains a pun even after importation to an English-speaking country.

A barrister who had been called to the colors, but was not yet on active service, appeared in court wearing his military uniform under the official barrister's gown, and in opening his case was particular to call the attention of the court to the circumstance that he was pleading uniformed.

The genial presiding justice observed with a smile that he was the more pleased to take cognizance of this fact because the court was accustomed to hear the learned counsel plead uninformed.—N. Y. Evening Post.

Helping Him Out. A physician who worthily bears a distinguished name occupies an old mansion in the suburbs of Boston. His aunt, who lives with him, tells a laughable story, illustrating his calmness of manner and love of method.

Not long ago his aunt tiptoed into his room on the second floor some time after midnight, and told him she thought there were burglars in the house. The doctor attired himself in his dressing robe and went downstairs.

In the rear he encountered a tough-looking man trying to open a door that led into the back yard. The burglar had successfully unlocked the door and was pulling at it with all his strength. The doctor, seeing the robber's predicament, called to him:

"It doesn't open that way, you idiot! It slides back!"—National Monthly.

Not Far Apart. Secretary Josephus Daniels was discussing a courteous retort.

"One may be excused," said he, "for feeling a little joy when the man who goes out of his way to make a rude remark simply to show his wit receives a rebuke that is as courteous as it is effective.

"A learned scientist was attending a dinner, and as cigars were being indulged in one of the guests began to deride philosophy. He went on rudely to express the opinion that philosopher was but another way of spelling fool.

"'What is your opinion, professor?' he asked, smilingly. 'Is there much distance between them?'

"The professor surveyed his boorish vis-a-vis keenly for a moment, then with a polite bow, responded:

"'Sometimes only the width of a table.'"—Pittsburgh Chronicle Telegraph.

Kisses for Charity. Nearly all the youth of the neighborhood attended the charity bazaar, and one by one they drifted to a stall where a tiny, shapely, scented gray kid glove reposed on a satin cushion. Attached to the cushion was a notice, written in a delicate feminine hand, which ran:

"The owner of this glove will, at 7:30 this evening, be pleased to kiss any person who purchases a ticket beforehand."

Tickets were purchased by the score, and at 7:30 a long row of young men assembled outside the stall.

Then, punctual to the moment, old Tom Porson, the local butcher, who weighs 200 pounds and is almost as beautiful as a side of bacon, stepped to the front of the stall.

"Now, young gents," he said, "this 'ere glove belongs to me. I bought it this morning. Now I'm ready for you. Come on! Don't be bashful! One at a time."—Philadelphia Ledger.